

United States
Circuit Court of Appeals
For the Ninth Circuit.

GUSTAVE L. GOLDSTEIN, as Trustee in Bank-
ruptcy of the Estate of Marvin Polakof,
Appellant,
vs.

MARVIN POLAKOF and IVAN POLAKOF,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the
United States for the Southern District
of California, Central Division.

FILED

JUL 6 1942

PAUL P. O'BRIEN,
CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Amendment to Complaint.....	12
Answer, Amended, of Defendant Ivan Polakof	11
Answer of Defendant Marvin Polakof.....	8
Appeal:	
Designation of Record on.....	273
Notice of	28
Order for Transmittal of Exhibits.....	32
Statement of Points on.....	273
Complaint	2
Complaint, Amendment to.....	10
Designation of Record on Appeal.....	273
Findings of Fact and Conclusions of Law.....	18
Judgment	25
Notice of Appeal.....	28
Reporter's Transcript	29
Statement of Points on Appeal.....	273
Stipulation for Amendment to Complaint.....	10

	Index	Page
Testimony		29
Exhibits for Defendants:		
B—Photostatic copies of ledger cards	218	
C—Check dated June 7, 1939 for \$155.20 drawn on Market and Produce branch of California Bank	226	
D—Check dated December 4, 1939 to county tax collector in the sum of \$80.91	235	
Exhibits for Plaintiff:		
3—Photostatic copy of Quitclaim Deed, dated August 26, 1937, from Marvin Polakof to Ivan Polakof	32	
4—Certified copy of power of attorney from Marvin Polakof to Sam Polakof	103	
5—Rental receipt dated May 10, 1938	113	
7—Financial Statement of Sam Pola- kof and Sons as of March 1, 1940	147	
8—Financial Statement of Ace Dis- tributing Company as of Septem- ber 30, 1940.....	153	
9—Financial Statement of Ace Dis- tributing Company as of Septem- ber 30, 1940.....	155	

Index	Page
Exhibits for Plaintiff (cont.):	
10—Carbon copy of Agreement, August 15, 1940, between Harold A. Davis, Eugene H. Rosenthal and I. H. Norton, and Marvin Polakof	167
11—Carbon copy of Financial Statement of Ace Distributing Company as of December 31, 1939.....	183
12—Photostatic copy of Quitclaim Deed from C. E. Crosbey, H. C. Kendall, and Frank Newhouse to Marvin Polakof	207
13—Photostatic copy of reconveyance dated June 2, 1939.....	213
Witnesses for Defendants:	
Corberly, Richard C.	
—direct	215
—cross	221
Engell, Raymond	
—direct	201
—cross	202
Kahn, Maurice	
—direct	254
Polakof, Ivan	
—direct	223
—cross	243

Index	Page
Witnesses for Defendants (cont.):	
Polakof, Marvin	
—direct	203
—cross	205
Tamblyn, Wesley	
—direct	197
—cross	199
Witnesses for Plaintiff:	
Albright, E. K.	
—direct	85
—cross	92
—redirect	107
—recross	121
Freeman, Gary	
—direct	71
—cross	73
Graeber, H. E.	
—direct	39
—cross	43
—redirect	62
—recalled, cross	125
—redirect	133
Jantzen, Miss Kuhne	
—direct	66
—cross	68
Kahn, Maurice	
—direct	178
—cross	188
—redirect	194
—recross	194
—redirect	195

	Index	Page
Witnesses for Plaintiff (cont.):		
Menick, A. S.		
—direct	74	
—cross	77	
Polakof, Marvin		
—direct	30	
—recalled, direct	141	
—cross	165	
—redirect	166	
Walther, Elmer J.		
—direct	63	
—cross	64	

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

JEROME L. EHRLICH, Esq.,
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For Appellees:

VICTOR S. COGEN, Esq.,
JOSEPH J. COGEN, Esq.,
609 Garfield Building,
403 West Eighth Street,
Los Angeles, California. [1*]

*Page numbering appearing at foot of page of original certified
Transcript of Record.

In the United States District Court, in and for the Southern District of California, Central Division.

No. 1532-BH

GUSTAVE L. GOLDSTEIN, as Trustee in Bankruptcy of the Estate of Marvin Polakof,
Plaintiff,

vs.

MARVIN POLAKOF, IVAN POLAKOF, JOHN
DOE ONE, JOHN DOE TWO, JOHN DOE
THREE, JOHN DOE FOUR, JANE DOE
ONE, JANE DOE TWO, JANE DOE
THREE,

Defendants.

COMPLAINT

(To recover property under Bankruptcy Act, to set aside fraudulent conveyance and to quiet title.)

Comes now the plaintiff and for cause of action against the defendants, and each of them, alleges:

I

That on or about the 5th day of December, 1940, in an action in the District Court of the United States for the Southern District of California, Central Division, entitled "In the Matter of Marvin Polakof, doing business as Ace Distributing Company, No. 37541M, in Bankruptcy", Marvin Polakof was duly adjudged a bankrupt. That thereafter, on or about the 14th day of January 1941, plaintiff

herein, Gustave L. Goldstein, was elected and appointed Trustee in Bankruptcy for the Estate of Marvin Polakof, doing business as Ace Distributing Company, and that the said plaintiff is now the duly qualified and acting Trustee in Bankruptcy of the above entitled Estate.

II

That prior to the commencement of this action, the above entitled Court made its Order authorizing, permitting and directing plaintiff to institute suit herein.

III

That jurisdiction of the above entitled court is conferred [2] thereupon by Section 67 and 70 respectively of the United States Bankruptcy Act, United States Code Title II, Chapter 7, Sections 107 and 110 respectively.

IV

That at all times between the 30th day of December, 1935 and the 6th day of December, 1940, the defendant, Marvin Polakof, was the owner and now is the owner of the property hereinafter described. That by reason of the order of the Court as aforesaid, all of the right, title and interest of the said Marvin Polakof in and to the property hereinafter described, is now vested in the plaintiff as Trustee in bankruptcy of the said Marvin Polakof and that the plaintiff at all times since on or about the 6th day of December, 1940, is the owner of the property described as that certain property situated in the County of Los Angeles, State of California,

and being the Southwest $\frac{1}{4}$ of Section 4, Township One, South Range 10, West S. B. B. & M., located in the County of Los Angeles.

V

That the defendants, and each of them, assert and claim an Estate or interest therein adverse to the plaintiff.

VI

That the claims of the defendants, and each of them, are without any right whatsoever and the defendants and each of them have no Estate, right, title or interest whatsoever in the said land or premises or any part thereof.

VII

That plaintiff is at the present time unaware of the true names of the defendants sued herein by the fictitious names of John Doe One, John Doe Two, John Doe Three, John Doe Four, Jane Doe One, Jane Doe Two, Jane Doe Three and prays leave of Court to amend this complaint by inserting their true names in lieu of said fictitious names, as aforesaid, when same are ascertained. [3]

For a second, separate and distinct cause of action, plaintiff alleges:

I

Plaintiff repeats and realleges each and every allegation contained in Paragraphs I, II and VI of the first cause of action and incorporates same

herein by reference thereto as if same were fully repeated herein.

II

That on or about the 30th day of December, 1935, the defendant Marvin Polakof purchased from one R. E. Allen, fee, interest and title to that certain real property situated in Los Angeles County, State of California and described as:

“S. W. $\frac{1}{4}$ of Section 4, Township One, South Range 10, West S. B. B. & M., located in the County of Los Angeles.”

That thereafter, Marvin Polakof held the said property and fee, interest and title thereto until on or about the 24th day of April, 1939. That on or about the 24th day of April, 1939, as aforesaid, the said Marvin Polakof did make, execute and deliver to defendant, Ivan Polakof, a Quit Claim Deed to the aforesaid property and that the said Deed was recorded in the Office of the County Recorder of the County of Los Angeles, on or about the said 24th day of April, 1939. That on the 24th day of April, 1939 and prior thereto, Marvin Polakof represented and held himself out to be the owner of the aforesaid property and that credit was extended to Marvin Polakof by certain of his creditors, upon the representation, and in reliance upon the fact, that the aforesaid property was in fact owned by Marvin Polakof.

III

That the aforesaid Deed, conveyance and transfer from Marvin Polakof, as aforesaid, to Ivan Polakof, was given, made and executed without value or consideration and that Ivan Polakof did not at any time give or pay or deliver to Marvin Polakof any consideration, [4] money or value whatever for the aforesaid Deed. That Marvin Polakof, Ivan Polakof, John Doe One, John Doe Two, John Doe Three, John Doe Four, Jane Doe One, Jane Doe Two and Jane Doe Three, on or about the 24th day of April, 1939, agreed and conspired with each other to transfer title to the aforesaid property from Marvin Polakof to Ivan Polakof with the intent, purpose and design to hinder, delay and defraud the creditors of Marvin Polakof and to conceal the right, title and interest of Marvin Polakof in and to the property as aforesaid, from the creditors of the said Marvin Polakof.

IV

That the plaintiff, as Trustee in bankruptcy, is the legal representative of the creditors of Marvin Polakof, bankrupt, and that the creditors of Marvin Polakof, bankrupt, who have filed claims in the aforesaid bankruptcy proceeding, were existing creditors on and before the 24th day of April, 1939.

V

That at the time of the filing of the aforesaid involuntary petition in bankruptcy, the said Marvin

Polakof was the owner and entitled to immediate possession of the property as aforesaid and that the plaintiff herein as Trustee in bankruptcy is now the owner and entitled to immediate possession of the property as aforesaid and that the property is part, parcel and an asset of the Estate of Marvin Polakof, Bankrupt.

Wherefore, plaintiff prays for judgment against the defendants and each of them as follows:

1. That the Court make its order adjudging and decreeing that legal title to the aforesaid property be in the plaintiff and that the defendants, and each of them, have no right, title or interest in and to the property as aforesaid.
2. That the conveyance and Deed from Marvin Polakof to Ivan Polakof concerning and affecting the title to the property described in the complaint be set aside, vacated and ordered to [5] be null and void and of no force or effect.
3. For an Order of the court giving and granting to the plaintiff immediate possession of the property described in the complaint.
4. For such other and further relief as to the Court may seem meet and just in the premises.

MAURICE J. HINDIN & JEROME ERLICH
By MAURICE J. HINAN
Attorneys for Plaintiff

(Endorsed): (Verified by Gustave L. Goldstein on May 13, 1941)

[Endorsed]: Filed May 13, 1941. [6]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, Marvin Polakof, and answering for himself alone, admits, denies and alleges as follows:

First Defense

I.

The complaint fails to state a claim against the defendant upon which relief can be granted.

II.

Defendant admits all the allegations contained in Paragraph I of plaintiff's First Cause of Action.

III.

Defendant alleges that he is without knowledge or belief sufficient to form a belief as to the truth of the allegations contained in Paragraphs II and III of plaintiff's First Cause of Action; defendant generally and specifically denies each and every allegation contained in Paragraphs IV, V and VI of plaintiff's First Cause of Action.

Second Defense

I.

The complaint fails to state a claim against the defendant upon which relief can be granted.

II.

In the Second Cause of Action, the defendant admits the [7] allegations contained in the incorpora-

tion of Paragraph I of the first cause of action; alleges that he is without knowledge or belief sufficient to form a belief as to the truth of the remaining allegations contained in the incorporation of Paragraph II of the first cause of action; denies, generally and specifically, each and every allegation contained in the incorporation of Paragraph VI of Plaintiff's first cause of action.

III.

Answering Paragraph II of plaintiff's Second Cause of Action, this defendant admits that on or about the 30th day of December, 1935, he purchased from one R. E. Allen, fee, interest and title to that certain real property situated in Los Angeles County, State of California, and described as:

S. W. $\frac{1}{4}$ of Section 4, Township 1, South Range 10, West S. B. B. & M., located in the County of Los Angeles

this defendant alleges that on or about the 26th day of August, 1937, that he made, executed and delivered to one Ivan Polakof, a quitclaim deed to the aforesaid property; this defendant denies, generally and specifically, all the remaining allegations contained in Paragraph II of plaintiff's Second Cause of Action not heretofore denied or admitted.

IV.

Defendant, generally and specifically, denies each and every allegation contained in Paragraphs III and V of plaintiff's Second Cause of Action.

V.

Defendant alleges that he is without knowledge or belief sufficient to form a belief as to the truth of the allegations contained in Paragraph IV of plaintiff's Second Cause of Action.

Wherefore: Defendant prays that plaintiff take nothing by his complaint herein, and that defendant recover his costs herein incurred.

JOSEPH J. COGEN

Attorney for defendant—Marvin Polakof,
609 Garfield Bldg., Los Angeles, Cal.

(Endorsed): Verified by Marvin Polakof Jun.
5, 1941

[Endorsed]: Filed Jun. 13, 1941. [8]

[Title of District Court and Cause.]

STIPULATION

(Amendment of Complaint)

It is hereby stipulated by and between the plaintiff herein and the defendants, Marvin Polakof and Ivan Polakof, by and through their respective counsel of record, that the plaintiff's complaint may be amended as follows:

By the addition thereto of the following paragraph VI. in the Second Cause of Action, as follows:

VI.

“That on or about the aforesaid 24th day of April, 1939 and continuing to date hereof, the said Marvin Polakof was insolvent and was without sufficient funds or property, other than the property referred to herein, sufficient to pay his creditors the sums due to them.”

It is further stipulated that the foregoing paragraph when added to the complaint on file herein may be deemed to be denied by the answer of the defendants and each of them.

Dated this 2nd day of October, 1941.

MAURICE J. HINDIN & JEROME ERLICH
By MAURICE J. HINDIN
Attorneys for Plaintiff

JOSEPH J. COGEN

Attorney for Defendants.

[Endorsed]: Filed Oct. 4, 1941. [12]

[Title of District Court and Cause.]

AMENDED ANSWER OF IVAN POLAKOF.

Comes now the defendant, Ivan Polakof, and answering for himself, alone, admits, denies and alleges as follows:

First Defense**I.**

The complaint fails to state a claim against the defendant upon which relief can be granted.

II.

Defendant admits all the allegations contained in paragraph I of Plaintiff's First Cause of Action.

III.

Defendant alleges that he is without knowledge or belief sufficient to form a belief as to the truth of the allegations contained in Paragraphs II and III of plaintiff's First Cause of Action; defendant, generally and specifically, denies each and every allegation contained in Paragraphs IV, V and VI of plaintiff's First Cause of Action.

Second Defense**I.**

The complaint fails to state a claim against the defendant upon which relief can be granted.

II.

In the Second Cause of Action, the defendant admits the allegations contained in the incorporation of Paragraph I of the First Cause of Action; alleges that he is without knowledge or belief suf-

[13]

ficient to form a belief as to the truth of the remaining allegations contained in the incorporation of Paragraph II of the First Cause of Action; denies, generally and specifically, each and every allegation contained in the incorporation of Paragraph VI of plaintiff's First Cause of Action.

III.

Answering Paragraph II of plaintiff's Second Cause of Action, this defendant alleges that on or

about the 26th day of August, 1937, a quit claim deed was made, executed and delivered to this defendant by one Marvin Polakof; that the aforesaid quit claim deed described that certain real property situated in Los Angeles County, State of California, and described as:

S. W. $\frac{1}{4}$ of Section 4, Township 1, South Range 10, West S. B. B. & M. located in the County of Los Angeles.

That the aforesaid quit claim deed was not recorded by this defendant until on or about the 24th day of April, 1939; that this defendant, denies, generally and specifically, all the remaining allegations contained in said Paragraph II of plaintiff's Second Cause of Action.

IV.

Defendant denies, generally and specifically, each and every allegation, contained in Paragraphs III and V of plaintiff's Second Cause of Action.

V.

Defendant alleges that he is without knowledge or belief sufficient to form a belief as to the truth of the allegations contained in Paragraph IV of plaintiff's Second Cause of Action.

For a separate and affirmative defense to plaintiff's complaint on file herein, this answering defendant alleges:

I.

That on the day of 1940, the Acampo Winery, a creditor of Marvin Polakof, and Marvin Polakof, one of the defendants in the above entitled action, entered into an agreement [14] wherein and whereby they agreed that the entire amount due to said creditor by said defendant, Marvin Polakof, would be the sum of \$6000.00, payable at the rate of \$500.00 per month, provided said indebtedness was guaranteed by one Percy Barker, also known as Percy Berkofsky; that said indebtedness was so guaranteed and that in furtherance thereof, twelve separate trade acceptances of \$500.00 each were executed by said defendant, Marvin Polakof, and payment thereof was guaranteed by Percy Barker, also known as Percy Berkofsky. That from and after the day of 1940, the said Acampo Winery received the sum of \$2000.00; that said Acampo Winery have and still have in their possession eight of the aforesaid trade acceptances in the sum of \$500.00 each executed by said defendant, Marvin Polakof, and guaranteed by Percy Barker, also known as Percy Berkofsky. That as a result of the execution of said agreement, this answering defendant was induced to influence the said defendant, Marvin Polakof, to take said Percy Barker, also known as Percy Berkofsky into the business of said defendant, Marvin Polakof, and that said answering defendant, Ivan Polakof, was induced to change his entire position with respect to the defendant, Marvin Polakof.

II.

That all said acts and agreements were performed with the full knowledge, consent and acquiescence of said Acampo Winery, after a full disclosure to said Acampo Winery concerning the transfer of the aforementioned real property and discussion of other transactions involving certain excess charges by the said Winery, and that as a result thereof and in reliance on the acceptance of the aforesaid trade acceptances and guarantee, this answering defendant was induced to change his position.

III.

That the Trustee in Bankruptcy, the plaintiff in the above entitled action, has no greater rights than the aforesaid Acampo [15] Winery. That the Acampo Winery ought not to be admitted to say that they are existing creditor who were defrauded by the aforesaid conveyance between Marvin Polakof and Ivan Polakof, for the reason that the aforesaid allegations contained in this separate defense constitutes an estoppel against said creditor.

For a separate, affirmative and second defense to plaintiff's complaint on file herein, this answering defendant alleges:

I.

That the apparent net value of the aforesaid property at the time of the aforesaid conveyance did not exceed the sum of \$1500.00 over and above all encumbrances then existing, allowing for im-

provements since erected, and paid for by this answering defendant, Ivan Polakof, the transferee. That the unpaid claims of the existing creditors, who claim to have been defrauded, hindered and delayed by the aforesaid acts of the defendant, Marvin Polakof, in no case exceeds the sum of \$1105.00. That the Trustee in Bankruptcy, the plaintiff in the above entitled action, has no greater rights than the aforesaid creditors.

For a separate, affirmative and third defense to plaintiff's complaint on file herein, this answering defendant alleges:

I.

That in purchasing the aforesaid property, making repairs and constructing improvements, this answering defendant has paid in a sum of monies in excess of \$3000.00. That all the aforesaid payments for repairs and constructions were made by this defendant on the property which at all times he considers his own. That this defendant should have a preferred lien on the aforesaid property or a trust impressed upon it to the extent of all monies paid by him for the purchase thereof, for the payment of encumbrances, for the making or repairs and for constructing of improvements erected thereon.

Wherefore: This answering defendant prays:

[16]

1. That plaintiff take nothing by his complaint;
or

2. That the Court should find that this defendant should have a lien on the aforesaid property to the extent of the monies advanced by him for the purchase of the aforesaid property, for the making of repairs, for the payment of encumbrances, for the construction of improvements erected on the aforesaid property; or
3. That a trust be impressed upon the aforesaid property for the monies advanced by this defendant for the purchase of the aforesaid property, for the making of repairs and for constructing of improvements erected thereon, and for the payment of encumbrances;
4. That in the event the Court should find this defendant has received property fraudulently conveyed, this Court should not award a judgment in excess of the amount remaining unpaid to any creditors who existed at the time of the transfer;
5. For costs incurred herein; and
6. For such other and further relief as the Court may deem just.

JOSEPH J. COGEN

Attorney for Defendant—

Ivan Polakof

[17]

State of California,
County of Los Angeles—ss.

Ivan Polakof, being by me first duly sworn, deposes and says: That he is the answering defendant in the above entitled matter; that he has read the foregoing Amended Answer and knows the contents

thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

IVAN POLAKOF

Subscribed and sworn to before me this 13th day of October, 1941

VICTOR S. COGEN (Seal)

Notary Public in and for said County and State.

[Endorsed]: Filed Oct. 14, 1941.

[18]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW.

The above entitled cause came on regularly for trial on the 14th day of October, 1941, before the Honorable Ben Harrison, Judge of the United States District Court, in and for the Southern District of California, sitting without a jury, a jury having been expressly waived; Maurice Hindin and Jerome Ehrlich, appearing as counsel for the plaintiff, and Victor S. Cogen appearing as counsel for the defendant, Marvin Polakof, and Joseph J. Cogen appearing as counsel for the defendant, Ivan Polakof, and the Court having heard the testimony and having examined the proofs offered by the respective parties, and the cause having been submitted to the Court for the decision, and the Court

being fully advised in the premises, the following findings of fact and conclusions of law constituting the decision of the Court in said action are hereby made.

Findings of Fact

First Cause of Action.

I.

That each and all of the allegations set forth in Paragraphs I, II, and III of the First Cause of Action of plaintiff's complaint are true.

II.

That each and all of the allegations set forth in Paragraph [19] IV, VI, and VII of the First Cause of Action of plaintiff's complaint are untrue.

III.

That it is untrue that the defendant, Marvin Polakof, asserts a claim or interest adverse to the plaintiff. That it is true that the defendant, Ivan Polakof, asserts a claim and interest adverse to the plaintiff.

IV.

That it is true that on December 30, 1935, and ever since said time, the defendant, Ivan Polakof, and no one else, was, has been and now is the sole owner of the real property hereinafter described as: "S. W. 1/4 of Section 4, Township One, South Range 10, West S. B. B. & M., located in the County of Los Angeles, State of California."

That it is true that the defendant, Marvin Pol-

akof, is not the owner of the said real property. That it is true that the plaintiff is not the owner of the said real property, and that the plaintiff has no right to the possession of the said real property.

Second Cause of Action.

I.

That each and all of the allegations contained in Paragraph I of the Second Cause of Action, reincorporating Paragraphs I and II of the First Cause of Action, are true.

II.

That each and all of the allegations contained in Paragraphs I of the plaintiff's First Cause of Action, reincorporating Paragraph VI of the First Cause of Action, is untrue.

III.

It is true that on or about the 30th day of December, 1935, the defendant, Marvin Polakof, became the record owner of a one-half interest in the aforesaid real property. That on or about May 15, 1936, the defendant, Marvin Polakof, became the record owner [20] of all the interest in the property, subject to a deed of trust in the sum of One Thousand (\$1000.00) Dollars. That on or about the 26th day of August, 1937, in Omaha, Nebraska, the said Marvin Polakof, did make, execute and deliver to the defendant, Ivan Polakof, a deed to the aforesaid real property and the said deed of

trust was recorded in the office of the County Recorder of the County of Los Angeles, State of California, on or about the 24th day of April, 1939.

IV.

It is true that on or about June 7, 1939, the defendant, Ivan Polakof, with his own funds, paid the One Thousand (\$1000.00) Dollar deed of trust secured by the said real property. That on or about the 26th day of June, 1939, a reconveyance on the aforesaid One Thousand (\$1000.00) Dollar deed of trust was recorded in the office of the County Recorder of the County of Los Angeles, State of California.

V.

It is true that on or about the 30th day of December, 1935, and ever since that time, the defendant, Ivan Polakof, has been and now is the sole owner of the aforesaid real property, and that the defendant, Marvin Polakof, on December 30, 1935, and ever since that time, never had any and now has no right, title and interest in and to the aforesaid real property.

VI.

It is true that the defendant, Marvin Polakof, never represented or *hold* himself out to be the owner of the aforesaid real property. It is true that none of the creditors of the said defendant, Marvin Polakof, ever extended to the defendant, Marvin Polakof, any credit or delivered any merchandise, services or personal property, relying on

the record ownership of the aforesaid real property by the defendant, Marvin Polakof. [21]

VII.

It is true that monies paid for the purchase of the real property, payment of the One Thousand (\$1000.00) Dollars deed of trust, and monies expended for repairs and upkeep of the real property was paid by the defendant, Ivan Polakof, from his own monies, and that no part of these monies were paid by the defendant, Marvin Polakof.

VIII.

It is true that the defendants, Ivan Polakof and Marvin Polakof, did not on the 24th day of April, 1939, or any dates prior thereof, or ever since that date agree and/or conspire with each other to transfer title to the aforesaid property from Marvin Polakof to Ivan Polakof with the intent and/or purpose and/or design to hinder and/or delay and/or defraud the creditors of Marvin Polakof and/or to conceal the right and title and interest of Marvin Polakof in and to the aforesaid property from the creditors of the aforesaid Marvin Polakof.

IX.

It is true that no badges of fraud whatsoever were present or involved in the acquisition of the record ownership in the name of Marvin Polakof (who was holding it for the real owner, Ivan Polakof), or the transfer of the record ownership of the real property from Marvin Polakof to Ivan Polakof.

X.

It is true that the plaintiff herein is not the owner of the aforesaid real property and is not entitled to the possession thereof, and that the said real property never was and now is not a part and parcel of the Estate of Marvin Polakof, Bankrupt.

XI.

It is true that on or about the 26th day of August, 1937, to and including April 30, 1939, the defendant, Marvin Polakof, was solvent and that the gross amount of his assets exceeded the gross amount of his liabilities. It is true that on August 26, 1937, [22] to and including April 30, 1939, the defendant, Marvin Polakof, had sufficient funds and/or property other than the aforesaid real property, sufficient to pay his then creditors any sums of monies due them.

From the foregoing facts, the Court concludes:

Conclusions of Law

And as conclusions of law from the foregoing facts, the Court finds:

1. That the defendant, Ivan Polakof, was during all times mentioned in the complaint and now is the sole owner in fee simple and is entitled to the immediate possession of the real property hereinbefore and in the complaint herein described, located in the County of Los Angeles, State of California, and more particularly described as: "S. W. $\frac{1}{4}$ of Section 4, Township One, South Range 10

West S. B. B. & M., located in the County of Los Angeles, State of California".

2. That the plaintiff take nothing by reason of the complaint on file herein.

3. That the claims of the plaintiff, Gustave L. Goldstein, as Trustee in Bankruptcy of the Estate of Marvin Polakof, Bankrupt, and the defendant, Marvin Polakof, and all persons claiming under them are without any right whatsoever, and said plaintiff and the defendant, Marvin Polakof, have no right, title or interest in and to said property or in the possession of said property; that all persons claiming under them are hereby enjoined and debarred from claiming or asserting any estate, right, title or interest in or claim or lien upon or possession of said real property, or any part thereof.

4. That the defendant, Ivan Polakof, is entitled to have and recover from the plaintiff and from the defendant, Marvin Polakof, the defendant's, Ivan Polakof, costs herein expended and taxed in the sum of \$

Dated: This 31 day of Oct., 1941, at Los Angeles, Calif.

BEN HARRISON

Judge of the District Court.

[Endorsed]: Filed Oct. 31, 1941. [23]

In the United States District Court, in and for the
Southern District of California, Central Di-
vision.

No. 1532-BH

GUSTAVE L. GOLDSTEIN, as Trustee in Bank-
ruptcy, of the Estate of Marvin Polakof,
Plaintiff,

vs.

MARVIN POLAKOF, IVAN POLAKOF, JOHN
DOE ONE, JOHN DOE TWO, JOHN DOE
THREE, JOHN DOE FOUR, JANE DOE
ONE, JANE DOE TWO, JANE DOE
THREE,

Defendants.

JUDGEMENT BY COURT AFTER TRIAL.

The above entitled action, came on regularly for trial on the 14th day of October, 1941, before the Honorable Ben Harrison, Judge of the United States District Court, in and for the Southern District of California, sitting without a jury; Maurice Hindin and Jerome Ehrlich, appearing as counsel for the plaintiff, and Victor S. Cogen appearing as counsel for the defendant, Marvin Polakof, and Joseph J. Cogen appearing as counsel for the defendant, Ivan Polakof; and the action having been dismissed as to all the fictitious defendants designated by the names of John Doe One, John Doe Two, John Doe Three, John Doe Four, Jane Doe One, Jane Doe Two, Jane Doe Three; and evidence,

both oral and documentary, having been introduced by the respective parties hereto, and the Court having heard the evidence and the arguments of counsel, and having fully considered the same, and having made its findings of facts and drawn its conclusions of law;

Now, therefore, it is ordered, adjudged and decreed:

1. That the defendant, Ivan Polakof, was during all times mentioned in the complaint and now is the sole owner in fee simple and is entitled to the immediate possession of that certain real property situated in the County of Los Angeles, State of California, and more particularly described as: "S. W. $\frac{1}{4}$ of Section 4, Township [25] One, South Range 10, West S. B. B. & M., located in the County of Los Angeles, State of California", referred to and described in the complaint of the plaintiff's on file herein.

2. That the plaintiff take nothing by reason of the complaint on file herein.

3. That the claims of the plaintiff, Gustave L. Goldstein, as Trustee in Bankruptcy of the Estate of Marvin Polakof, Bankrupt, and the defendant, Marvin Polakof, and all persons who claim title under them in and to said real property, are without any right whatsoever; and that the said plaintiff, Gustave L. Goldstein, as Trustee in Bankruptcy of the Estate of Marvin Polakof, Bankrupt, and the defendant, Marvin Polakof, during all times mentioned herein never had and now have no right,

title, interest, claim or estate whatsoever in and to the said real property or any part thereof, and have no right to the possession of said real property. That the said plaintiff, Gustave L. Goldstein, as Trustee in Bankruptcy of the Estate of Marvin Polakof, Bankrupt, and the defendant, Marvin Polakof, and all persons claiming under them are hereby enjoined and debarred from claiming or asserting any estate, right, title or interest in or claim or lien upon or possession of said real property, or any part thereof.

4. That the said defendant, Ivan Polakof, have and recover from the plaintiff, Gustave L. Goldstein, as Trustee in Bankruptcy of the Estate of Marvin Polakof, Bankrupt, and from the defendant, Marvin Polakof, the defendant's, Ivan Polakof, costs herein expended and taxed in the sum of \$28.60.

Dated this 31 day of Oct., 1941, at Los Angeles, California.

BEN HARRISON

Judge of the District Court.

[Endorsed]: Judgment entered Oct. 31, 1941.

Docketed Oct. 31, 1941

Book C. O. #7 Page 233

[Endorsed]: Filed Oct. 31, 1941. [26]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Defendants Marvin Polakof and Ivan Polakof,
and to their respective attorneys, Victor S.
Cogen Esq. and Joseph J. Cogen Esq.:

Please take notice that the plaintiff hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment which was entered in this case on October 31, 1941.

Dated at Los Angeles, California, January 26, 1942.

MAURICE J. HINDIN & JEROME EHRLICH
By JEROME L. EHRLICH
Attorneys for Plaintiff

(Endorsed): Filed Jan. 29, 1942.

Copies mailed to Attys. for Defts. E. L. S. Rec'd
copy 1/29/42 JOSEPH J. COGEN. [28]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT
OF
TESTIMONY AND PROCEEDINGS
ON TRIAL.

Appearances:

Maurice J. Hindin, Esq. and

Jerome Ehrlich, Esq.

For Plaintiff.

Joseph J. Cogen, Esq., and

Victor Cogen, Esq.

For Defendants.

Los Angeles, California, Tuesday, October 14, 1941,

10 A. M.

The Clerk: No. 1532 Civil, Gustave L. Goldstein,
trustee, vs. Marvin Polakof and others.

Mr. Hindin: Ready for the plaintiff.

The Court: Proceed.

Mr. Hindin: Has your Honor become familiar
with—

The Court: Yes. I don't care for an opening
statement. I have read the pre-trial statements and
I understand the issues.

Mr. Hindin: Very well. I desire to call Mr.
Marvin Polakof as an adverse party.

MARVIN POLAKOF,

called as a witness on behalf of Plaintiff, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Marvin Polakof.

Direct Examination

Q. By Mr. Hindin: Are you the same and identical person who is the bankrupt in the action entitled in the Matter of Marvin Polakof, Bankrupt, No. 37541, in the District Court of the United States? A. I am.

Q. You are? [2*] A. Yes.

Q. Now, Mr. Polakof, calling your attention to the 30th day of December, 1935, did you have occasion to purchase a piece of real estate from one R. E. Allen?

A. As I recall, that property was purchased in my name. I didn't purchase the property.

Q. You didn't purchase the property?

A. No, sir.

Q. It was purchased in your name?

A. That is right.

Q. I show you—

The Court: Is it a certified copy?

Mr. Hindin: Yes, a certified copy.

The Court: It isn't necessary to have it identified, is it, counsel?

Mr. Joseph Cogen: No.

*Page numbering appearing at top of page of original Transcript
of Record.

(Testimony of Marvin Polakof.)

Mr. Hindin: I offer it in evidence as Plaintiff's first in order.

The Clerk: Plaintiff's Exhibit 1.

Plaintiff's exhibit 1 is a Deed from R. E. Allen, as Trustee in Bankruptcy of Realty Mortgage Corporation to A. Fratkin and Marvin Polakof, dated October 30, 1935, covering the property involved in this action. The deed recites a consideration of \$2,625.00 and was recorded in the office of the Recorder of Los Angeles County on January 4, 1936.

Q. By Mr. Hindin: Now, at that time you purchased this property jointly with one A. Fratkin?

Mr. Joseph Cogen: Just a minute—

A. I didn't purchase the property.

Mr. Joseph Cogen: I object to that on the ground that it is assuming facts not in evidence. The witness has stated that the property was purchased in his name, but he [3] did not purchase it. Counsel asked him, "When did you purchase the property?" We want to make that distinction here, because the contention is that Mr. Marvin Polakof did not own the property.

The Court: You can ask him when he acquired it under this deed.

Q. By Mr. Hindin: When did you acquire the property under the deed? You were named as a grantee jointly with—

(Testimony of Marvin Polakof.)

The Court: Well, the instrument speaks for itself, counsel.

Mr. Hindin: I just want to identify the second instrument, which purports to be a deed from A. Fratkin to Marvin Polakof.

The Court: A certified copy?

Mr. Hindin: A certified copy.

The Court: Unless there is some objection it will be admitted. Let us not take any time proving certified copies.

Mr. Hindin: All right.

The Clerk: Plaintiff's Exhibit 2.

Plaintiff's exhibit 2 is a deed from A. Fratkin and Marvin Polakof, to Marvin Polakof, dated May 15, 1936, covering the same property. The deed recites a consideration of \$10.00, and was recorded on May 18, 1936.

Q. By Mr. Hindin: Did you make a deed to one Ivan Polakof, which is dated—

The Court: Is there any dispute about that?

Mr. Joseph Cogen: The execution? No, there is no doubt about the execution.

Mr. Hindin: All right. We will offer this. [4]

The Clerk: Plaintiff's Exhibit 3.

PLAINTIFF'S EXHIBIT 3

QUITCLAIM DEED

I, Marvin Polakof, of the County of Los Angeles, State of California, in consideration of the sum of Ten (10.) Dollars, to me in hand paid, the

(Testimony of Marvin Polakof.)

receipt of which is hereby acknowledged, do hereby remise, release and forever quitclaim to Ivan Polakof, of the County of Los Angeles, State of California, all that real property situated in the County of Los Angeles, State of California, described as follows:

“That portion of the southwest quarter of Section 4, Township I South, Range 10 West, S.B.B. & M. in the County of Los Angeles, State of California, described as follows:

Beginning at a point distant North 1 deg. 16' 30" East 660 feet from the South line of said quarter section, and distant North 89 deg. 54' 15" West 1340 feet from the East line of said quarter section, as said lines are shown on a map of the Puente and Azusa Bridge Road, recorded in Book 3842, Page 6 et seq. of the Deeds Records of said County, thence North 89 deg. 54' 15" West, parallel with the South line of said quarter section 330 feet, thence North 1 deg. 16' 30" East parallel with the east line of said quarter section 660 feet; thence South 89 deg. 54' 15" East 330 feet; thence South 1 deg. 16' 30" West 660 feet to the point of beginning.

Except therefrom a 30 foot strip along the North, South, East and West sides for street purposes together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

(Testimony of Marvin Polakof.)

To Have and to Hold to the said grantee, his heirs or assigns forever.

Witness my hand this 26th day of August, 1937.

MARVIN POLAKOF.

State of Nebraska,
County of Douglas—ss.

On this 26th day of August, A. D. 1937, before me, C. O. Darner, a Notary Public in and for said County and State, personally appeared Marvin Polakof, known to me, (or proved to me on the oath of), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] C. O. DARNER,
Notary Public in and for said County and State.
Commission expires May 18, 1941.

#832—Copy of Original recorded at request of
Grantee Apr. 24, 1939, 10:53 A. M. Copyist #37.
Compared. Mame B. Beatty, County Recorder, By
W. Whitney, Deputy.

\$1.00-5.P.

Q. By Mr. Hindin: This property that is referred to in these certified copies is what is known as the Baldwin Park property, is it not; that is, it is located in Baldwin Park?

(Testimony of Marvin Polakof.)

A. That is right.

Q. Ivan Polakof, the grantee under this last conveyance, that is the conveyance which was last admitted in evidence, is your brother, is he not?

A. That is right.

Q. What was the purchase price of this property?

The Court: You mean originally?

Mr. Hindin: Yes.

The Court: Well, doesn't the deed speak the true consideration?

Mr. Hindin: I just want to know whether it does or not, your Honor. I think it is essential to establish that.

The Court: Here is a statement by the trustee in bankruptcy. I assume that the recitals in there would be accepted.

Mr. Hindin: Very well.

The Court: Is there any argument about that?

Mr. Joseph Cogen: No, your Honor.

Q. By Mr. Hindin: When this property was transferred by you to your brother what did you receive for it?

A. I received a letter from my brother, that is, while [5] I was at Omaha, Nebraska, and in this letter he explained to me that since I was contemplating marriage at that time and this property was actually his, that I should return it back to him. I was merely holding it for him as a matter of convenience, because at the time the property was

(Testimony of Marvin Polakof.)

purchased it was actually his property and he was making a trip east.

Mr. Hindin: I move that be stricken as not responsive to the question.

The Court: Motion denied. It will all come out, anyhow.

Mr. Hindin: All right.

Q. Did you receive any money from him at all for this transfer?

A. In the letter was enclosed, I believe, a check for \$10.

Q. You received \$10? A. That is right.

Q. For this property?

A. I beg your pardon. I did not receive \$10 for the property. In the letter was enclosed a check for \$10.

Q. And you executed then a deed to him?

A. I did.

Q. And in that deed the consideration expressed was \$10, was it not? A. That is right. [6]

The Court: The deed speaks for itself, counsel.

Mr. Hindin: All right.

Q. Do you know when this deed was recorded?

The Court: Doesn't the instrument speak for itself, counsel?

Mr. Hindin: Very well. The only point is that the date of recordation may become material in this case.

The Court: If he knows when it was recorded?

(Testimony of Marvin Polakof.)

Mr. Hindin: Yes.

The Court: You may ask him that question.

Mr. Hindin: You see, your Honor,—

The Court: No explanation is necessary. Go ahead with the evidence, gentlemen. I have permitted it; if he knows.

Q. By Mr. Hindin: Do you know why the deed was withheld from recording between the date that appears on the face of it and the date that it was ultimately recorded? A. No, I don't.

Q. At the date of the transfer what was the reasonable market value of that property?

A. I don't recall.

Q. Do you recall giving testimony in an examination before Referee Dickson on the 6th day of March, 1941?

A. I gave testimony before Referee Dickson at that time.

Q. Do you recall that you were questioned concerning [7] the value of that property?

A. Yes, I was.

Q. Now, let me read to you a question that was put to you at that time:

“Q. What was the value of the property at that time?

“A. At that time? Oh, between \$1500 and \$2500.”

Do you recall giving that testimony?

A. I recall giving that testimony.

(Testimony of Marvin Polakof.)

Q. What?

A. I believe I gave that testimony.

Q. Does that refresh your recollection as to the value of that property at the time of the transfer?

A. Yes. It does now.

Q. Did you receive any other property or money or thing of value, other than the \$10, for making this deed? A. Will you repeat the question?

Mr. Hindin: Repeat the question, Mr. Reporter.

(Question read by reporter.)

A. I did not receive \$10 for making this deed.

Q. Did you receive \$10 at or about that time?

A. That is right.

Q. With the letter that requested you to make the deed?

A. That is right. I tried to explain to you that I was getting married.

Q. Did you receive any other property or money?

A. No, sir. [8]

Q. That was all you received? A. Yes.

Q. Do you now know what the reasonable value of that property was about the 24th day of April, 1939?

A. Well, as you refresh my memory, between fifteen hundred and twenty-five hundred.

Mr. Hindin: That is all.

Mr. Joseph Cogen: No questions.

The Court: Call your next witness.

Mr. Hindin: Is the representative of the Acampo Winery here? Will you take the stand, please? [9]

H. E. GRAEBER,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

The Clerk: Will you state your name, please?

The Witness: H. E. Graeber.

Direct Examination

Q. By Mr. Hindin: Mr. Graeber, what is your position or occupation?

A. I am the office manager and assistant secretary of the Acampo Winery and Distillers.

Q. That is a corporation, is it not?

A. Yes, sir.

Q. On or about the 24th day of April, 1939, was Marvin Polakof indebted to the Acampo Winery?

Mr. Joseph Cogen: We object to that, your Honor, on the ground that there is no showing as yet that there has been any transfer made in fraud of creditors. We feel that should be first presented to the court before he establishes any indebtedness.

The Court: The point in my mind is this: What difference does it make in 1939? The deed was executed in 1937.

Mr. Hindin: But the evidence, as appears from the face of it, shows there was no recordation of that instrument until 1939. And as to existing creditors, without notice of this deed, they are not charged with any knowledge of the transfer between the parties until—— [10]

The Court: You may proceed. Answer the question.

(Testimony of H. E. Graeber.)

A. Yes, sir. It was indebted to Acampo Winery.

Q. By Mr. Hindin: Do you have the books of the Acampo Winery with you at this time, or copies of them?

A. I haven't got the books. I have a copy of the —or not a copy, but the original accounts acceptable and trade acceptances receivable showing the accounts of the Ace Distributing Company.

Q. Is that a book of original entry?

A. No, sir. That is the individual account record.

The Court: Were those records kept by your company in the ordinary course of business?

A. Yes, sir.

The Court: Very well.

Q. By Mr. Hindin: Will you tell us, on the 24th day of April, 1939, what amount was due and owing from Marvin Polakof to the Acampo Winery?

Mr. Joseph Cogen: If the court please, in order that we may not be continuously making objections, may it be understood that we object and except to all of the answers of the witness to anything that occurred to show the indebtedness on April 24, 1939?

The Court: As you make your objections I will rule on them. Objection overruled.

A. \$9,388.29, approximately.

Q. By Mr. Hindin: How much? [11]

A. \$9,388.29, approximately. That is, as of April 30th. The way these books are kept the balances are run down at the end of the month, but that would be substantially the same on April 24th.

(Testimony of H. E. Graeber.)

Q. Substantially the same? A. Yes.

Q. Let me ask you this: Your concern is the same and identical company which has filed a claim in bankruptcy in the matter of the estate of Marvin Polakof, doing business as Ace Distributing Company? A. Yes, sir.

Mr. Hindin: At this time, your Honor, we will offer, by reference, the claims.

The Court: Can't you gentlemen stipulate a claim was filed, without the necessity of encumbering the record?

Mr. Joseph Cogen: Your Honor, in this matter I represent the defendant Ivan Polakof. He was not a party to the bankruptcy proceedings. I don't want to encumber the record, yet I want to ask for proof of everything in the claim, because I want to substantially cross-examine the witness on the matter.

The Court: All right. The claim may be introduced by reference.

Mr. Hindin: Thank you, your Honor. If it has been offered in evidence and received in evidence there is no necessity then, I take it, to go into the question. [12]

The Court: He has answered the question. He said he owed ninety-three hundred and some odd dollars.

Mr. Hindin: I am just inquiring whether your Honor wanted further testimony regarding the indebtedness as of the time of the bankruptcy.

The Court: No.

(Testimony of H. E. Graeber.)

Mr. Hindin: That is all, then.

The Court: Do you have any financial statements from these people?

A. I haven't them with me, your Honor.

The Court: Do you have any?

A. Yes; I think they are in the hands of our attorney.

The Court: Where are they now?

A. I imagine they are in Mr. Walther's office, in Los Angeles, here.

The Court: Are they going to be produced, gentlemen?

Mr. Hindin: No; I don't believe so.

The Court: Well, the court wants them. Let us find out if there has been any representations made as to the ownership of this property.

Mr. Hindin: Very well, your Honor. We will attempt to produce them.

The Court: They belong to your company, don't they?

The Witness: Yes, if they exist.

The Court: All right. I am going to direct you to obtain them and return here to court with them.

[13]

Mr. Hindin: I understand Mr. Walther will be a witness here, also, during the day.

The Court: I don't care how you produce them. But here is a \$9300 claim and I want to find out if there has been any representations made as to the ownership of this property.

(Testimony of H. E. Graeber.)

Mr. Hindin: Very well. That is all. Cross-examine.

Cross Examination

Q. By Mr. Joseph Cogen: How much was due your company in August, 1927; August 25th?

A. In August of 1937? I assume you mean at the end of August, approximately? \$4,175.33.

Q. \$4,175.33? A. \$4,175.33.

Q. Are you able to tell us how much merchandise was purchased from your concern from August 26, 1937, to April 24, 1939?

A. Yes: I would be in a position to tell you, but I would almost have to have an adding machine, I believe. From August until how far?

Q. Can you add it up now?

A. For how long do you want that? For what period did you say you wanted that?

Q. From October 26, 1937, up to and including the 24th day of April, 1939.

A. Well, that would be rather difficult to do here [14] without some paper or something to figure it.

The Court: Are there a lot of transactions?

Mr. Joseph Cogen: Quite a bit, your Honor.

The Court: I am not going to take the time to add them up in court, counsel.

Mr. Joseph Cogen: The idea is this, your Honor: That there were continuous business transactions between these parties: and in the last analysis there couldn't have been any intent to deprive them of any assets.

(Testimony of H. E. Graeber.)

The Court: Why don't you ask him generally what it would average? Run through a month or two.

Mr. Joseph Cogen: That would be fine, your Honor.

The Court: Take a month or two and find out what was the average amount of transactions. That will bring it out.

Q. By Mr. Joseph Cogen: What was the average amount of business you did with the Ace Distributing Company during that period of time, per month?

A. Oh, I would say approximately \$5,000 a month.

The Court: How much?

A. \$5,000. They purchased approximately \$5,000 worth; three or four lots of wine a month.

The Court: And how much were the approximate payments during that time?

A. Oh, the payments would be about the same.

The Court: Just slipping a little bit behind each month, [15] over a period of years?

A. Well, it is hard to tell whether or not the payments were made on the basis of trade acceptances. The trade acceptances were not always due on the day they were made. But I would say the payments were a little bit less. I wouldn't say from 1937 they were continually less, but towards the end they were continually less.

(Testimony of H. E. Graeber.)

Mr. Joseph Cogen: I didn't get the last answer.

A. I wouldn't say the payments were less from 1937 on, until the end of the purchases—toward the end.

The Court: Was there ever a period of time when they did not owe you any money?

A. I don't think so. Not since 1935, when we started doing business.

Q. By Mr. Joseph Cogen: How long after April 24, 1939, did they continue doing business with you?

A. How long after that?

Q. Yes.

A. The last purchase charged to the Ace Distributing Company on our books was on June 30th.

The Court: 1939?

A. June, 1940.

The Court: Have they paid you any money between 1939 and 1940? A. Oh, yes. [16]

The Court: In other words, they continued in their regular course of business up until about that time, when they started getting behind in large amounts? A. Yes, sir.

Q. By Mr. Joseph Cogen: Do you have your Trade Acceptance record here? A. Yes, I do.

Q. How much is the average price that they paid for wine that they purchased from your organization?

A. Well, that varied considerably.

Q. Before you answer that question, you may include all the government taxes in the price.

(Testimony of H. E. Graeber.)

A. That is a pretty hard question to answer over such a long period of time, on account of the fluctuation in wine prices, but I would say, including the tax, 50 cents, 55 cents, something like that.

Q. How much?

A. I am just guessing. It is an awfully hard estimate, over that period of time.

The Court: We don't want you to guess. If you don't know, say so.

A. It couldn't be determined without putting the figures down.

Q. By Mr. Joseph Cogen: Would you say it would not exceed 60 cents a gallon?

A. No, I wouldn't want to say that. [17]

Q. Was it as much as a dollar a gallon?

A. No.

Q. It wasn't? A. No.

Q. What type of wine did you ordinarily sell them?

A. Sweet wine, from 14 to 21 per cent, mostly.

Q. How did you sell it to them, in tank cars or barrels?

A. The biggest volume we did went in tank cars; some in barrels.

Q. At the time of the bankruptcy were there any bills remaining unpaid for merchandise which you sold them on or before the 24th day of April, 1939?

A. What was that question again, please?

Mr. Joseph Cogen: Will you read the question?

(Question read by reporter.)

(Testimony of H. E. Graeber.)

A. On the day of the bankruptcy? Was that April 24th?

Q. The date of bankruptcy was December 4, 1939.

The Court: What?

Mr. Joseph Cogen: December 4, 1940. I am sorry.

A. No. That is another question I couldn't answer without first analyzing this account.

The Court: Can you do that?

A. It will take me just a minute.

The Court: Won't the claim show it, gentlemen?

Mr. Joseph Cogen: I think it will. I want to show that—

The Court: What does the claim itself show, gentlemen? [18]

Mr. Joseph Cogen: Your Honor, there are two claims filed in bankruptcy; one known as Exhibit A, including invoices, and one known as Exhibit A revised. Exhibit A contains no invoices unpaid prior to December 1, 1939. It contains \$11,000 worth of purchases from December to May, 1940. It contains credits and adjustments of some \$3,385.30, with no date set—I presume it is on the basis of payments since these bills came in—leaving a balance of \$8,000. This is Exhibit A revised.

The Court. Is the revised claim any different?

Mr. Joseph Cogen: Yes, it is, your Honor.

The Court: Does it show—

Mr. Joseph Cogen: The revised claims show

(Testimony of H. E. Graeber.)

three invoices, dated preceding April 24, 1939, which remain unpaid.

Mr. Hindin: The record speaks for itself. They have been offered.

The Court: Only one claim was offered. Which one was offered?

Mr. Hindin: They are both combined, your Honor.

The Court: They are combined?

Mr. Hindin: Yes. One is just supplemental to the other.

The Court: What have you to say to that?

Mr. Joseph Cogen: I think the revised one was filed supplementary to this one.

The Court: The revised one shows the first item on [19] 9/18/39.

Mr. Joseph Cogen: There are some items below it, your Honor.

The Court: Oh, yes. Were these all handled through trade acceptances?

A. Yes, practically all.

The Court: In other words, on every shipment you would get a trade acceptance?

A. Yes.

The Court: How would you explain the difference between these two statements, one of them showing—

Mr. Joseph Cogen: Your Honor, if I may, I think I can bring that out to help the Court.

(Testimony of H. E. Graeber.)

The Court: All right. You may proceed.

Q. By Mr. Joseph Cogen: You have testified before that in no case did you sell the merchandise at a price of a dollar a case. I call your attention to three invoices, November 9, 1938. Invoice 3718; 750 gallons, and the price \$773.75. Is that correct?

A. I imagine so, if it is in there. Let me see what that covers.

Q. Did you have this schedule prepared?

A. Yes. I think that was bottled wine, which would include taxes and, naturally, would run more than a dollar a gallon. When you asked me that I was thinking of only the naked price of the wine. I am not sure, but I think this [20] is the invoice—isn't there an invoice attached to that?

Q. Yes. There are invoices attached.

A. Yes. You see, that is wine in bottles.

Q. You have already testified that it was your usual course, I believe, to send them wine in tank cars and barrels. On how many occasions did you send them wine in bottles?

A. I would have to consult the records, but I think about three or four times.

Q. As a matter of fact, it was actually three times, was it not?

A. I would have to look at these invoices.

The Court: Counsel, we are wasting time.

A. Yes, three times.

Mr. Joseph Cogen: Well, I am going to show that this merchandise was not sold to them, but it was consigned to them.

(Testimony of H. E. Graeber.)

The Court: Proceed. Get down to it.

Q. By Mr. Joseph Cogen: At the time you delivered the merchandise to the Ace Distributing Company what was their method of payment?

A. Usually they would give us a trade acceptance.

Q. When would that trade acceptance be signed?

A. Sometimes shortly after the load went down. Sometimes it took a long time after the load went down. In the case of the bottled wine it was almost a year before we got any settlement. [21]

Q. Did you attempt to collect those bills before the trade acceptances were signed?

A. Yes. We attempted to get trade acceptances on them, I am sure.

Q. Did you attempt to do that before you got your trade acceptances?

A. Well, I would not be in a position to answer that. That would be a matter of policy. Perhaps there were. I wouldn't know.

Q. On all the invoices except these three invoices you got trade acceptances immediately on delivery, did you not?

A. Not always. Sometimes it took 30 days to get the trade acceptance.

The Court: Did you have any trouble getting trade acceptances in any case except the bottled goods?

A. Yes, we did. They were slow coming through lots of times.

(Testimony of H. E. Graeber.)

Q. By Mr. Joseph Cogen: Wasn't it slow in coming through with reference to the merchandise that the Ace Distributing Company picked up for Acampo, for other accounts of Acampo, like Acme Distributing of Pasadena, F & M Bottling Company and Big Tree Wawona Winery?

Mr. Hindin: We will object to that on the ground it is complex.

Mr. Joseph Cogen: I will revise the question.

Q. Wasn't there a delay in signing trade acceptances [22] where they picked up merchandise for you from the Acme Distributing Company of Pasadena?

A. When I said—

The Court: Is that the same company?

Mr. Joseph Cogen: That is a different company. It is a distributor of the Acampo, a competitor of the Ace, who is in Pasadena.

The Court: What materiality has that?

Mr. Joseph Cogen: I am going to show, your Honor, that every time there was a delay in signing a trade acceptance that the reason for that was to save them from a loss if there was an adjustment, and until the matter was adjusted no trade acceptance was signed. But when regular merchandise was sent down to the Ace they signed a trade acceptance with a bill of lading.

Mr. Hindin: To which we will object on the ground that it is incompetent, irrelevant and imma-

(Testimony of H. E. Graeber.)

terial, not within the scope of any of the issues and not proper cross examination.

The Court: Well, I will let him go into that. Proceed.

Mr. Joseph Cogen: Will you answer the question?

The Court: Read it, please.

The Witness: Is it all right for me to explain that when I am talking about trade acceptances I was talking only about charges to Ace Distributing Company?

Mr. Joseph Cogen: Go ahead; say anything you want. It is all right with me. [23]

The Court: Proceed, gentlemen. There is a question pending. Read the question.

(Question read by reporter.)

A. Well, I know that such merchandise was picked up by Ace, but I wouldn't testify that those were the only trade acceptances which were held. It was the common practice.

Q. By Mr. Joseph Cogen: Was the same procedure followed in picking up material from the F & M Bottling Company of Los Angeles?

A. I am not familiar with that.

Q. You are not familiar with that. Was the same procedure followed in assisting Acampo with reference to the Wawona or Big Tree Winery?

A. If I recall correctly Ace picked up a load sent there that was consigned to them.

(Testimony of H. E. Graeber.)

Q. And wasn't the usual procedure over this period of years the same?

A. The trade acceptances, you mean? No; the trade acceptances would be mailed in the mail and sometimes wouldn't come back to our office for months.

Q. And what were the usual terms of the trade acceptance?

A. Well, over that period of time they varied.

Q. Let us refer to the period of August, 1937.

A. I think at that time they were made for approximately 90 days after date of delivery.

Q. And in April, 1939? [24]

A. About the same.

Q. In either of those periods were they considerably delinquent or were they paying close to the due date of the trade acceptance?

A. Well, there were considerable extensions. In other words, the trade acceptance would become due, we will say, then an extension would be made and new trade acceptance would be given to extend the time of payment. That happened quite regularly.

Q. Would you say what percentage of times it happened?

A. Well, that is kind of hard to say.

Q. Do you have any idea?

The Court: As I understand, they owed something like \$4,000 in 1939; over \$4,000.

Mr. Joseph Cogen: That was in 1937.

(Testimony of H. E. Graeber.)

The Court: How much in 1939?

A. That varied.

The Court: In August, 1939?

A. Approximately \$8300.

The Court: They were doing about \$5,000 worth of business a month, so they owed for about 60 days' purchases.

Q. By Mr. Joseph Cogen: The trade acceptances were for 90 days?

A. Not in all cases.

Q. That was a conservative average; is that right?

A. Yes; I think that would be just about the average [25] time.

Q. In these special bottled goods—referring to the three invoices you have testified to already—do you know anything about any particular deal as to those special bottled goods?

A. No, I do not.

Q. Do you know what the set-up was as far as payment or selling it was concerned?

A. No, I can't say that I do. In keeping the records, of course, I notice that the time was old and that there was no settlement made, but what the understanding was with some other officer who had charge of the sale, I don't know.

Q. Do you know whether the Acampo people at that time established a sales division down in Los Angeles, in the headquarters of Ace, for the purpose of selling Acampo bottled wine?

(Testimony of H. E. Graeber.)

Mr. Hindin: We will object to it as incompetent, irrelevant and immaterial; not proper cross examination.

Mr. Joseph Cogen: I am laying a foundation for the consignment of merchandise, your Honor, which is exactly what happened.

The Court: Suppose he does know of it, what difference does it make?

Mr. Joseph Cogen: If this merchandise was consigned no bill was intended for it.

The Court: Well, if he doesn't know—

Mr. Joseph Cogen: I am sorry. I am just trying to [26] refresh his memory.

The Court: Why don't you ask him if there was any arrangement for consignment?

Q. By Mr. Joseph Cogen: Did you have any arrangements to have men by the name of Menilla, Russo and Lenci sell that wine out of Ace in Los Angeles?

A. I don't know anything about such arrangement as that, because it would not be my premise to make such an arrangement with anybody. So I am not familiar enough with it to say yes or no.

Q. You did have such salesmen operating out of Los Angeles and they did receive some checks from your office?

A. Yes. I think at one time we paid them some expense checks, but what the arrangement was I don't know.

Q. Did the Ace Distributing Company or Mar-

(Testimony of H. E. Graeber.)

vin Polakof make any direct representation to you or before the 24th day of April, 1939, that he owned the piece of property known as the Baldwin Park property? A. To me personally?

Q. Yes, or to your company, to your knowledge?

A. I don't think I am qualified to answer that question.

The Court: To your knowledge?

A. No.

The Court: Did you ever hear of it?

A. No, I can't say as I did, except that it—just here recently. [27]

The Court: That is, since this litigation?

A. Of course, that wouldn't necessarily—

Mr. Joseph Cogen: I didn't get the witness' answer.

The Court: He said he never heard of the Baldwin Park property until this litigation came up.

A. Of course, my not hearing about it wouldn't necessarily mean it wasn't in existence, because I wasn't in a position to know those matters if they were discussed with other officials in the company than I.

Q. By Mr. Joseph Cogen: Did you ever tell the manager of the Ace Distributing Company, Mr. Sam Polakof, that he was paying more for the wine than other outfits you were doing business with?

A. No.

The Court: What difference does that make, counsel?

(Testimony of H. E. Graeber.)

Mr. Joseph Cogen: Your Honor, I have here an amended answer—I omitted to file it; I am sorry; if I may file it with permission of plaintiff's attorney—in which we are setting up an estoppel and compromise, and one of the bases for the estoppel and compromise was the fact that they would get these bills straightened out, which I admit is part of my case for defense.

The Court: Well, put it in under defense, then.

Mr. Joseph Cogen: All right, your Honor.

Q. Did you ever receive any instructions as to how to apply payments of money which was received from the Ace [28] Distributing Company?

A. No, I don't think—the payments? I don't—

Q. If you don't understand the question I will reframe it. A. Will you repeat that?

Mr. Joseph Cogen: Oh, that is all.

Mr. Victor Cogen: If your Honor please, I represent Mr. Marvin Polakof and I wonder if I could ask some questions to clear up a statement of \$2,000 paid, as shown on the claim there?

The Court: Yes.

Q. By Mr. Victor Cogen: Mr. Graeber, I will show you what has been introduced here as Exhibit A revised. Referring to a claim filed by the Acampo Winery & Distillers against the Ace Distributing Company, I note on the invoice on this Exhibit A three items which are the items which have not been paid, to-wit, November 9, 1938, \$773.75; January 5, 1939, \$111; January 25, 1939,

(Testimony of H. E. Graeber.)

\$813.91; then an item "Bottled wine from Acme \$635.75"; making a total of \$2,334.41. Underneath that is a statement "Less adjustments of \$660.01," leaving a balance of \$1668.40; then a cash payment of \$600, leaving a balance of \$1,068.40. I note at the bottom of this exhibit, \$2,000 paid by Bokofsky. Who is Mr. Bokofsky?

A. He was connected with the Ace Distributing Company.

Q. When you received this \$2,000, at that time the three [29] oldest bills that you had aggregated \$1,068.40; is that correct? A. Yes, I think so.

Q. As I have read it to you? A. Yes.

Q. Those were all bills that were incurred, according to the statement, prior to April 24, 1939; is that correct?

A. May I see that before I answer? [30]

Q. Yes.

A. Prior to April 24. Yes, that is right.

Q. In other words, the only bills that the company owed, prior to the date of the recordation of this deed on April 24, 1939, was the sum of \$1,068.40—— A. No, that isn't right.

Q. —which were unpaid at the time of the filing of this Exhibit A?

A. On April 24th the Ace Distributing Company owed us approximately \$8,300.

Q. But approximately \$7,000 of that was paid, which you gave them credit on the account; isn't that true?

(Testimony of H. E. Graeber.)

A. What date are you speaking of when you mention—

Q. This estate was filed in the bankruptcy court and the bankruptcy was about December 1, 1940. Prior to December 1, 1940 they had paid you approximately \$7,000 on account of the obligations due on April 24, 1939?

A. That is an awfully hard question for me to answer, because the volume of business we did with those people was quite large, and to say yes or no to a question like that—

Q. Were there any bills that were incurred prior to April 24, 1939 which were unpaid at the time of the bankruptcy and which bills are not marked on Exhibit A revised?

Mr. Hindin: To which we will object as being incompetent, irrelevant and immaterial. The effective date in a matter of this kind is as of the effective date of the transfer, [31] which was April 24, 1939.

Mr. Victor Cogen: That is what I am referring to.

The Court: Read the question.

(Question read by reporter.)

The Court: Objection overruled.

A. If I got the question correctly—

Q. By Mr. Victor Cogen: If you want to we will have the reporter read it, because I don't want you to be confused about any question.

The Court: Read the question, Mr. Reporter.

(Question read by reporter.)

(Testimony of H. E. Graeber.)

A. Well, there were these three that were prior to April 24, 1939.

Q. By Mr. Victor Cogen: Yes; but were there any other bills in addition to those that are marked on Exhibit A revised?

A. Exhibit A revised covers the entire indebtedness at the time of the bankruptcy.

Q. You received \$2,000 from a Mr. Bokofsky; is that correct? A. That is right.

Q. And you applied that on the account?

A. Yes, sir.

Q. If you applied the \$2,000 to the payment of the oldest bills that would be approximately \$1,000 more than sufficient to pay off these oldest bills; is that correct? [32] A. If that is done, yes.

Q. When you received money from the Ace Distributing Company, from April 24, 1939 to and including December 1, 1940, did you apply those moneys to any particular items?

A. In some instances I imagine they were applied to particular items. For instance—

The Court: Let me ask you this: You say you took trade acceptances? A. Yes.

The Court: Wouldn't you put them in the bank and pick them up at the bank?

A. Yes. In some cases they would come back unpaid and we would pick them up.

The Court: In other words, when you received a check it was for a specific trade acceptance?

A. Yes, sir.

(Testimony of H. E. Graeber.)

Q. By Mr. Victor Cogen: At the time you received the \$2,000 from Mr. Bokofsky was there any agreement drawn up at that time?

A. Yes, I believe there was.

Q. Do you have the agreement here?

A. No, I haven't.

Q. Where is that agreement?

A. I think that our attorney, perhaps, has it—a copy of it.

Q. Is there a copy in the City of Los Angeles?

[33]

A. I believe so.

Mr. Victor Cogen: I wonder if the court will direct the witness to bring that agreement in? I can't complete the cross examination without the agreement.

The Court: Is counsel familiar with the agreement?

Mr. Hindin: Yes, we are familiar with the agreement.

Mr. Victor Cogen: Do you have a copy of it, counsel?

Mr. Hindin: No, I don't have a copy of it. Mr. Walther is in court now, and I may ask him if he has a copy of the agreement, in order to save time.

The Court: Yes.

Mr. Hindin: Do you have a copy of it?

Mr. Walther: Yes, I have a copy at my office.

Mr. Hindin: At the lunch hour recess would you get it?

(Testimony of H. E. Graeber.)

Mr. Walther: I would be glad to.

The Court: Are you the man that has the financial statement?

Mr. Hindin: Yes. Do you have the financial statement that was offered to Acampo by Ace Distributing Company?

Mr. Walther: I have in my possession a financial statement that was signed by, I think, Sam Polakof.

The Court: The court wishes that, too.

Mr. Hindin: Very well, your Honor.

Mr. Victor Cogen: May the court then excuse the witness until the agreement—

The Court: Do you have any further questions you want [34] to ask at this time?

Mr. Hindin: Just one further question.

Redirect Examination

Q. By Mr. Hindin: Were, in fact, the payments which were received between April 24, 1939 and the date of the bankruptcy applied to preexisting obligations, or were they applied to current purchases, if you know?

A. They were just credited to the account.

The Court: Wouldn't those be payments for a specific trade acceptance?

A. Well, if the trade acceptance was delivered in the customary manner we did not receive those payments. We discounted the trade acceptance with the bank and the bank received the trade acceptance. I would say, yes, that they were applied to a specific trade acceptance.

(Testimony of H. E. Graeber.)

The Court: The record of the trade acceptances will show that, gentlemen.

Q. By Mr. Hindin: Do you have a record of the trade acceptances?

A. Yes, I have.

Mr. Hindin: May we have that in evidence, then?

Mr. Victor Cogen: Why not have the witness come back at 2 o'clock with all these exhibits and let's get through with them then?

Mr. Hindin: Very well. [35]

The Court: See if you can go into it during the recess and do your armithmetic before 2 o'clock.

Mr. Hindin: Very well. [36]

ELMER J. WALTHER,

called as a witness on behalf of plaintiff, being duly sworn, testified as follows:

Direct Examination

Q. By Mr. Hindin: Mr. Walther, what is your business or occupation?

A. I am an attorney at law.

Q. Calling your attention to the 24th day of April, 1939 was Marvin Polakof indebted to you at that time?

A. The Ace Distributing Company was indebted to me. If they are synonymous, he was.

Q. I see. You have filed, have you not, Mr. Walther, a verified claim in bankruptcy in the Mat-

(Testimony of Elmer J. Walther.)

ter of Marvin Polakof, doing business as Ace Distributing Company? A. Yes, I have.

Q. I show you what purports to be a verified claim, with a bill attached to it, for \$100, the bill bearing date April 7, 1939, and ask you if that sum was owing to you at that time.

A. Yes, it was.

Mr. Hindin: At this time we will offer the verified proof of claim in evidence, by reference to the file in the bankruptcy action.

Q. Has that sum ever been paid to you?

A. No, it hasn't. [37]

Q. The claim is still due and unpaid?

A. Yes, sir.

Mr. Hindin: That is all.

Cross Examination

Q. By Mr. Victor Cogen: Was that claim for services rendered before August 26, 1937?

A. I can't answer that offhand.

Q. Well, what was the claim? What were the services that were rendered in behalf of this claim?

A. The services consisted of representing the Ace Distributing Company, or Marvin Polakof, in connection with a hearing before the State Board of Equalization.

Q. When was that?

A. I am sorry, I don't know. My secretary is on a vacation and the file is a discarded file. I couldn't locate it.

(Testimony of Elmer J. Walther.)

Q. The name of the licensee or name of the party represented in the State Board of Equalization was Marvin Polakof, was it?

A. I believe that is correct.

Q. Did Marvin Polakof make any direct representation to you at that time that he owned property in Baldwin Park?

A. At the time of that hearing?

Q. Yes. A. No, he did not. [38]

Q. Did you rely in any way upon his owning property for the payment of your claim?

A. No, I didn't.

Q. What did you rely upon, Mr. Walther?

A. For the payment of the claim, you mean?

Q. Yes.

A. Oh, I don't know. The same as any other engagement. I didn't rely on anything in particular.

Q. You relied on the business as it was, did you not?

A. Yes. I simply accepted the engagement and that was all there was to it. I didn't rely on anything.

Mr. Victor Cogen: That is all.

Mr. Hindin: That is all. [39]

MISS KUHNE JANTZEN,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Kuhne Jantzen.

Direct Examination

Q. By Mr. Hindin: Miss Jantzen, what is your business or occupation?

A. Assistant collection manager of The May Company.

Q. Do you have in your possession or under your control the record of the accounts receivable of The May Company? A. I do.

Q. Will you kindly get your record now and ascertain whether or not Marvin Polakof was indebted to The May Company on or about April 24, 1939? A. Yes, he was.

Q. What was the amount of his indebtedness to The May Company on that day? A. \$18.96.

Q. \$18.96. When was that account incurred?

A. On the 20th day of May, 1937.

Q. Has anything been paid on that account?

A. Yes. We have had a few payments on it.

Q. What is the balance due on that account as of this [40] date? A. \$17.06.

The Court: No purchases? Is that a running account?

A. No. It is a sales contract. A conditional sales contract.

The Court: What was that?

(Testimony of Kuhne Jantzen.)

A. A gentleman's suit.

The Court: On a conditional sales contract?

A. Yes.

The Court: You didn't get the suit back?

A. Not yet.

Q. By Mr. Hindin: I show you what purports to be a proof of claim in the Matter of the Estate of Marvin Polakof, filed by The May Company, and ask you if that is the same and identical account as you have testified to as being the account which was due and owing as of April 24, 1939?

A. Yes, it is.

Mr. Hindin: At this time we will offer the verified proof of claim of The May Company, as it appears in the files of the Estate of Marvin Polakof in bankruptcy, in evidence as plaintiff's next in order.

The Clerk: By reference?

Mr. Hindin: By reference, yes. That is all.

The Court: When you sell a suit like that do you get any financial statement from the party?

A. We took a printed application from him.

[41]

The Court: Have you that?

A. Yes, I have.

The Court: May I see it?

A. Yes.

The Court: I can't understand that, with this man's business. It looks like he was a student, according to that statement, doesn't it?

(Testimony of Kuhne Jantzen.)

A. He had previously been a student. I think he was still a student.

The Court: There was no representation that he owned any property?

A. No, it was claimed that his parents owned the property.

The Court: Proceed.

Cross Examination

Q. By Mr. Victor Cogen: I note from information listed on the reverse side of this agreement, Mr. Polakof did not sign this information, did he?

A. Yes, he did.

Q. Well, he signed this portion of the agreement that is above the instrument; isn't that correct?

A. The credit information was all taken before the signature.

Q. At this time it shows him working as a clerk for Victor Cogen, an attorney, and also it shows verification of [42] that information; is that correct? A. Yes.

Q. You were not relying on any real estate or any security of real estate or ownership of real estate of Mr. Polakof, as a basis for credit?

A. No; we were relying on the information as shown; the fact that he was living at home with his parents; that his parents owned the property; that his occupation was verified and that he was employed.

(Testimony of Kuhne Jantzen.)

The Court: Let me see that again.

The Witness: The posting is on the one side; the contract is on the reverse side.

The Court: What does it mean down here?

A. The account has been transferred to the Retail Merchants' Credit Association, because it was unpaid.

The Court: It is a secured claim, isn't it, gentlemen?

Mr. Hindin: It isn't regarded as such in the file.

The Court: The contract calls for security.

Mr. Hindin: If the court please, there is an option granted to them to waive that security, which they have done by filing the claim in bankruptcy.

The Court: Go ahead. Proceed.

Mr. Hindin: I have no further questions.

The Court: Any questions, gentlemen?

The Witness: Your Honor, may I ask if there were letters accompanying the claim that were filed with the [43] reservation? Very often we make a reservation on conditional sales contracts.

The Court: Where is the claim that was filed? What are you referring to now as a reservation?

A. I don't know that I made it. In this case I did not. I attached a copy of the contract itself, which shows that title is retained in The May Company. Sometimes I make a reservation on the side

(Testimony of Kuhne Jantzen.)

of the claim, showing that we are reserving a right, in accordance with the contract. I wasn't sure whether I had in this case, or not.

The Court: Let me see the claim.

The Witness: It was attached to the copy of the contract in this case.

Q. By Mr. Hindin: There was no attempt by The May Company in this instance, was there, to reserve title to the suit?

A. I assume that a copy of the contract itself would be—

Q. No. I mean with reference to the bankruptcy.

The Court: That is what she has answered. She said she filed a copy of the contract. She assumed that was a reservation of title.

Q. By Mr. Hindin: You had no intention of getting the suit back by reason—

The Court: Just a moment, now, about what her intention was or what she did. She has made a statement of what she [44] has done.

Mr. Hindin: The point is this: As a matter of law, the effect of filing the claim—

The Court: The instrument will speak for itself. As a matter of fact, she testified she thought she had written on the side of it a retention of title. Well, I believe I will let her answer that question. You may proceed and ask the question.

Q. By Mr. Hindin: Did you intend to get the suit back by reason of filing this claim, or did you file the claim for the money?

(Testimony of Kuhne Jantzen.)

A. I filed a claim because I had been requested to file a claim in the bankruptcy matter. It is difficult, in merchandise of this kind, to tell whether the merchandise is still in existence or not.

Q. I see. In other words—

A. If the merchandise is in existence we have, on occasions, retaken wearing apparel.

Q. But you did accept, did you not, a 10 per cent dividend that was paid in lieu of the return of any merchandise, that is, in the regular course of bankruptcy administration, so far as—

Mr. Victor Cogen: We object to that on the ground that it is a double question. I assume she has received 10 per cent.

The Court: The legal effect of it is there, gentlemen.

Mr. Hindin: Very well. I have no further questions. [45]

GARY FREEMAN,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Gary Freeman.

Direct Examination

Q. By Mr. Hindin: Mr. Freeman, what is your business or occupation?

A. I am the credit manager of the Royal Credit Jewelers.

(Testimony of Gary Freeman.)

Q. Do you have under your charge or control the books of the accounts receivable of the Royal Credit Jewelers? A. Yes, I do.

Q. As of the 24th day of April, 1939 was Marvin Polakof indebted to the Royal Credit Jewelers?

A. Yes, he was.

Q. What does the record reveal to be the amount of the indebtedness? A. \$67.71.

Q. \$67.71. At the date of his bankruptcy in December, 1940 was there still an unpaid balance?

A. Yes. \$25.

Q. I will show you what purports to be the claim of the Royal Credit Jewelry Company for the balance due as of the date of the—I don't seem to find it. [46] A. This is it.

Q. That is hazy. A. Yes.

Mr. Hindin: At this time we will offer the claim of Royal Credit Jewelers in the Estate of Marvin Polakof, a verified claim, by reference.

Mr. Victor Cogen: To which we object on the ground that the claim itself indicates that it is a secured claim, a conditional sales contract, covering a man's watch, a ladies' diamond ring and ladies' wedding ring.

The Court: When were those purchased?

A. Well, they were purchased, your Honor, in March of 1938 and in July of 1938.

The Court: Did you ever get them back?

A. No, we haven't, your Honor.

(Testimony of Gary Freeman.)

The Court: I am going to let it in and let you gentlemen argue about that afterwards. It was a secured claim? You had a conditional sales contract?

A. Yes; on a conditional sales contract.

The Court: The claim speaks for itself.

Q. By Mr. Hindin: A general claim for money was filed in the bankruptcy estate, wasn't it?

The Court: The claim speaks for itself, counsel.

Q. By Mr. Hindin: Your organization received a 10 per cent payment on account, by the trustee in bankruptcy?

The Court: The record of the bankruptcy court will so [47] show.

Mr. Hindin: Very well.

The Court: Did you receive any financial statement at the time you got that?

A. None other than the credit application at the time the credit was extended.

The Court: Did he make any representation to any property holding?

A. Not in so far as the credit application was concerned.

Cross Examination

Q. By Mr. Joseph Cogen: Do you know what the Royal Credit Jewelers relied upon to give that credit?

A. Well, they usually rely on the statements contained in the application, plus a clearance through the Credit Association.

(Testimony of Gary Freeman.)

Q. How long have you been with the Royal Credit Jewelers?

A. For some time. More than a year.

Q. Did you listen to a discussion on that bill that I had with Mr. Cohen who, I believe, was the owner of Royal? A. Yes, I did.

Q. Do you remember Mr. Cohen saying something about there was a particular friendship between one of his ex-employees, a Mr. Roy Levinson, and Mr. Marvin Polakof? [48]

A. Yes, he mentioned something of that.

Q. And wasn't that the major reason—

The Court: Counsel, you can't get evidence in that way. If counsel hasn't any objection I have.

Mr. Joseph Cogen: That is all, your Honor.

Mr. Hindin: That is all. [49]

A. S. MENICK,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: A. S. Menick.

Direct Examination

Q. By Mr. Hindin: What is your business or occupation? A. I am an appraiser.

Q. Appraiser. Is that your business or do you do that as special work?

(Testimony of A. S. Menick.)

A. That is my business, yes.

Q. Are you connected with the Federal Bankruptcy Court? A. I am.

Q. How long have you been an appraiser?

A. Since 1937.

Q. You have continuously, since 1937, engaged in the business of appraising property?

A. I have.

Q. Calling your attention to property located in Baldwin Park and described as a portion of the Southwest quarter of Section 4, Township 1 South, Range 10 West of San Bernardino Base and Meridian, located in Los Angeles County, did you have occasion to inspect that property recently?

A. Yes, I did. [50]

Q. Are you familiar with the reasonable, fair market value of that property and property in that vicinity? A. Yes, I am.

Q. Were you familiar with the fair market value of that property and property in that vicinity in the month of April, 1939?

A. I had an occasion to make an appraisal approximately at that time; a little prior to that, I believe, in 1938.

The Court: Of this same property?

A. No; property close by.

Q. By Mr. Hindin: In the same vicinity?

A. Yes.

Q. Are you familiar with the fair market value of this property at that time?

(Testimony of A. S. Menick.)

A. Yes; that is, from our investigation.

Q. In your opinion what was the reasonable fair market value of this property as of the 24th day of April, 1939?

A. I would say it would be approximately the same as it is at the present time. It would be very little—

Q. What is that amount?

A. \$8,500.

Q. Approximately \$8,500? That is the property which the record title appeared in the name of Marvin Polakof until the 24th day of April, 1939, and appeared in the name of Ivan Polakof after that date; is that correct?

Mr. Victor Cogen: Answer if you know. [51]

A. I don't know that it was in Marvin Polakof's name. I know that the record in the assessor's office now shows the record title owner as Ivan Polakof.

Mr. Hindin: That is all.

The Court: What kind of property is it?

A. It is five acres of land located, I would say, between Baldwin Park and Azusa, over there near the San Gabriel Wash. It is altogether agricultural land and industrial property.

The Court: Is it improved?

A. Yes; it has an industrial building, a factory building 200 by 60, located on the property.

The Court: Is it on the highway?

A. Yes; it is just a block off of Bonita Avenue

(Testimony of A. S. Menick.)

or Bonita Street. I think it is also known as Highway, and improved highway.

The Court: You say you figure there was no change in the value between 1937 and 1939?

A. No; 1939 and the present time.

The Court: 1939 and 1941?

A. Yes. I would say it is approximately the same.

The Court: That is all.

Cross Examination

Q. By Mr. Victor Cogen: On how many occasions have you been in the vicinity of Baldwin Park for the purpose of appraising property, since 1939? [52]

A. Since 1939? Well, not in this immediate vicinity; but in Azusa; this other piece of property that was appraised the latter part of 1938.

Q. What type of property did you appraise in 1938?

A. It was practically the same type of property as this is.

Q. Will you tell the court what it is? I don't know just what kind it is.

A. Well, it had—it was approximately 20 acres of the same type of ground, with an improved factory building, similar type of building and, I believe, approximately the same size building as on this property.

(Testimony of A. S. Menick.)

Q. What type of soil did you find there and, if so, did you make any tests?

A. You mean this property or the other?

Q. I mean this particular property that we have under discussion, the Baldwin Park property.

A. The Baldwin Park property? Well, I didn't make any tests, but I think it is agricultural to the same extent.

Q. What do you mean by agricultural to the same extent?

A. That it can be used for growing agricultural products.

Q. Mr. Menick, we are trying to get down to a basis of what you made your estimate. Please answer the question and don't digress. What type of agricultural products would you say?

A. The property surrounding it has fruit trees—
[53] orange trees.

Q. All right. Did you make any tests of the surrounding property to see what type of soil it was, if it was identical with the soil that was on this particular property? A. No; I made no tests.

Q. You know that in Southern California we have a great variety of soils, don't you?

A. Yes.

Q. And we have lands adjacent to each other, and one type of agricultural products can be raised on one piece of property and it can't be raised on the adjoining piece of property; that is true, isn't it?

(Testimony of A. S. Menick.)

A. Yes, it is.

Q. Did you see any agricultural products on this property? A. Not at the present time.

Q. Do you know whether any was raised in 1939?

A. I don't.

Q. Do you know whether there was any attempt to raise any agricultural products on this property from the time people first came into California up to the present time?

A. I wouldn't know that.

Q. Then you didn't make any trial tests to find out whether or not this property——

The Court: He has answered that.

Q. By Mr. Victor Cogen: When you were making this [54] appraisal you were basing it on the fact that some sort of agricultural products could be raised there; is that right?

A. Not necessarily; no.

The Court: You said there was a factory building. How old is it?

A. The building was built in 1925 or 1926.

The Court: Of what material?

A. Made of concrete. Hollow concrete tile.

The Court: Is it in use?

A. Yes, it is.

The Court: For what purpose?

A. There is a boat building plant located there.

Q. By Mr. Victor Cogen: Do you know what rental the man was paying? A. Yes, I do.

Q. How much was the rent?

(Testimony of A. S. Menick.)

A. He told me he was paying \$40 a month.

Q. \$40 a month. Then the income was \$480 a year, isn't that right?

A. Under that arrangement, yes; but I don't think—

Q. Just answer the question, please. How much were the taxes against this property?

A. I don't know what the taxes are.

Q. Well, you were sent out to appraise the property. Weren't you interested in the amount of the taxes?

A. Not necessarily, in arriving at a valuation.

[55]

The Court: Did you ascertain the assessed valuation? A. I did of the land, yes.

The Court: What is it?

A. \$580, I believe.

The Court: What did the assessed valuation include?

A. I didn't check that. \$530 for the land.

The Court: What did you estimate the value of the building?

A. The building I estimated at the present time as approximately \$7,000 to \$7,500.

The Court: What would be the cost of replacing it at this time?

A. The replacement cost would be from \$10,000 to \$12,000.

Q. By Mr. Victor Cogen: Where did you get

(Testimony of A. S. Menick.)

the information about the assessed valuation of the land?

A. From the county assessor's office.

Q. The county assessor's office. Is that the book where they have all the various properties, and then on the side they have the assessed valuation?

A. Yes.

Q. And did that book have the assessed valuation of the building, in addition to the land?

A. I assume it did, but I didn't see it.

Q. Well, you were looking at it, weren't you?

A. Yes. [56]

Q. What type of improvement was there outside of the hollow concrete wall?

A. I don't know what you mean by the question.

Q. Well, you found a building there, didn't you?

A. Yes.

Q. How big was it?

The Court: I think we have heard enough on that.

A. 200 by 60.

Mr. Victor Cogen: I want to show, your Honor, that the value, from an examination alone, couldn't be relied upon, because it is merely, as I see it, just going out there and looking—

The Court: Why don't you ask him, "How much time did you spend out there?"

Mr. Victor Cogen: All right, your Honor.

The Witness: I spent approximately half a day.

Q. By Mr. Victor Cogen: All right. Now, have you been in the building business?

(Testimony of A. S. Menick.)

A. Not myself; no.

Q. Did you ever build a building of the type of construction of that building out there?

A. No, I haven't.

Q. Did you take the dimensions of this building and the plans, and try to ascertain from a contractor what he would reproduce the building for?

A. Not this particular building, but I have—

[57]

Q. I am just asking you about this building.

A. Not of this particular building; no.

The Court: The size of the building is what?

A. 200 by 60. 12,000 square feet in area.

Q. By Mr. Victor Cogen: Did you look at the roof of the building? A. Yes, I did.

Q. What condition did you find it in?

A. It wasn't in very good condition.

Q. And the building itself hasn't been painted for years, has it?

A. I don't believe that type of building requires paint.

Q. Did you find the building in A-1 condition?

A. Well, not A-1 condition, considering that the roof is in bad shape.

Q. This building is approximately 16 years old, isn't it? A. Yes, sir.

Q. Do you know what the average life of this building would be considered?

A. I think they figure 50 years.

(Testimony of A. S. Menick.)

Q. What do you mean, you think they figure?

A. That is my understanding.

Q. Where did you get your understanding?

A. In discussing with builders and contractors.

Q. Have you seen any of those buildings of the age of 50 years? [58]

A. I don't believe there is any of them in that vicinity that have been built that long.

The Court: What was the building constructed for?

A. Well, I imagine a manufacturing place.

The Court: Has it a concrete floor?

A. A concrete floor; yes, sir.

Q. By Mr. Victor Cogen: Do you know the last time when a manufacturer occupied that building? A. No, I don't.

Q. Is there a manufacturer located close to that building?

A. Yes; there is one right across the street.

Q. Where is the next one after that?

A. I believe there is another one about a block away.

Q. And where is the next one after that?

A. Well, I don't know. There are about half a dozen, I think, right in that immediate vicinity.

Q. And those are smaller buildings, aren't they?

A. Well, some of them are larger buildings than this.

Q. This isn't considered a manufacturing district, is it?

(Testimony of A. S. Menick.)

A. Well, I think it is, to a certain extent. There are quite a few manufacturing businesses in the district.

Q. When I am talking about "district" I mean one like we have in Los Angeles or Long Beach or Santa Monica.

The Court: Gentlemen, as far as the court is concerned [59] you are taking up too much time on the value of this property. I will listen to the different experts. I know how a lot of these fellows appraise property, and if there is any question as to the value I will listen to your experts.

Q. By Mr. Victor Cogen: Did you advise with any banks in the vicinity to find out how much they would loan against this building?

The Court: I am going to instruct the witness not to answer that question. It is immaterial.

Q. By Mr. Victor Cogen: Did you ask any banks in the vicinity as to their appraisal of the property?

Mr. Hindin: We will object on the same grounds.

The Court: I will permit that question.

A. No, I didn't.

Q. By Mr. Victor Cogen: Did you communicate with any lending institutions—

Mr. Hindin: Same objection, your Honor.

Mr. Victor Cogen: Pardon me. I didn't get through.

Q. —as to the value of the particular property in question?

(Testimony of A. S. Menick.)

Mr. Hindin: Same objection, on the ground that it is immaterial, incompetent and irrelevant.

The Court: I am going to overrule the objection.

A. No, I didn't.

Mr. Victor Cogen: That is all, your Honor.

The Court: That is all. Call your next witness.

[60]

E. K. ALBRIGHT,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: E. K. Albright.

Direct Examination

Q. By Mr. Hindin: Mr. Albright, what is your business or occupation?

A. Real estate broker.

Q. You are a real estate broker?

A. Yes, sir.

Q. Are you engaged in that business at this time?

A. I am.

Q. Were you engaged in that business around the month of April, 1939? A. I was.

Q. Are you familiar with the fair market value of property in Baldwin Park, particularly the property described as a portion of the southwest quarter of Section 4, in Township 1 south, Range 10 in that vicinity? A. I am.

(Testimony of E. K. Albright.)

Q. How long have you been familiar with property in that vicinity? A. Since 1926.

Q. Do you reside in that vicinity yourself?

A. I do. [61]

Q. Did you engage in buying and selling real estate in that vicinity? A. I did.

Q. Are you familiar with this particular piece of property in which Marvin Polakof and Ivan Polakof are interested? A. Yes. I built it.

Q. You built that? A. Yes, sir.

Q. In the month of April, 1939, what, in your opinion, was the reasonable and fair market value of that property? A. About \$9,500.

Q. About \$9,500? A. Yes, sir.

Q. What, in your opinion, is the reasonable and fair market value of that property at this time?

A. Approximately \$10,000.

Q. What is that property like? I mean, what does it consist of?

A. It consists of five acres of land located on the corner of French Avenue and Fourth Street, and improved with a concrete block building, a concrete floor, 60 by 200, sky lights, and divided into partitions. It was originally built for the California Law Publishing Company. It has an 18-inch concrete floor over a portion of the floor space; steel truss windows all around; steel truss skylights; [62] metal doors; and the interior is divided into office space and industrial division portion. It is wired with heavy construction conduits. It has two sets of toilets and showers. The sanitary condition is

(Testimony of E. K. Albright.)

taken care of by cesspool. The water condition is ably serviced by a 6-inch steel main running 900 feet along the property. The gas is installed by a 3-inch gas line; it has telephone service and power line. It is 300 feet from a railroad and it is located in a general industrial area.

Q. What is the building suited for?

A. For most any kind of manufacturing purpose.

Q. Are you acquainted with Mr. Marvin Polakof, who is seated at the counsel table? A. I am.

Q. Did you have occasion to confer or discuss with him about this property between 1937 and 1939? A. I did.

Q. Did you have occasion to discuss this property with him after 1939? A. I did.

Q. Did he ever declare to you that he did not own that property?

A. No; he did not declare that.

The Court: I think you had better ask him what he said.

Q. By Mr. Hindin: Let me call your attention to one occasion. Did you have occasion to go with Mr. Polakof to [63] a zoning commission hearing?

A. With Ivan Polakof—yes, with Marvin Polakof.

Q. With Marvin? A. Yes, sir.

Q. With Marvin Polakof. When was that?

A. About 1939. In 1939.

Q. In 1939? A. Yes, sir.

Q. Do you remember what month it was?

(Testimony of E. K. Albright.)

A. It was in the summer. It was July.

Q. In July, 1939? A. Yes, sir.

Q. You went with Mr. Polakof. Where did you go with him? A. To a planning commission.

Q. A planning commission?

A. In Los Angeles.

Q. And at that time there was a matter with reference to the use of this property, was there not?

A. Yes, sir.

Q. At that time did you have a conversation with Mr. Marvin Polakof relative to this property?

A. Yes, sir.

Q. At that time did Mr. Polakof make any statement to you as to the ownership of this property?

A. No; he did not. I needed Mr. Polakof to sign a [64] zoning variance. I built a shed over there and they required a zoning variance.

Q. Did you ask Mr. Polakof whether he was the owner of that property?

A. No. I was so familiar with the situation I didn't have to ask the question. As a matter of fact, I sold the property to them and was very familiar with the conditions.

Q. You sold the property to Mr. Marvin Polakof? A. Yes, sir.

Q. You knew that Mr. Polakof owned the property at that time?

Mr. Victor Cogen: Just a minute. I object to that on the ground that it calls for a conclusion of

(Testimony of E. K. Albright.)

the witness, that he knew that Mr. Polakof owned the property.

Mr. Hindin: I will reframe the question.

The Court: He said he sold it to him.

Mr. Victor Cogen: Well, see if he is referring to 1935 or 1937 or 1939.

A. In 1935. It might have been 1936. I have the lease here. I leased it for them. First I sold it to Mr. Polakof, then I leased it for them.

Q. By Mr. Hindin: You represented Mr. Polakof, after you sold the property to him, for the purpose of leasing it? A. Yes, sir.

Q. When you asked Mr. Polakof to sign this zone variance did you ask him to sign as owner of the property? [65] A. Yes.

The Court: If he signed any lease, produce it, please. I am not going to take secondary evidence.

Q. Mr. Hindin: Do you have that petition, then?

The Court: That is a matter of public record, isn't it?

The Witness: Yes.

Mr. Hindin: Well, it has been my experience that records of the zoning commission are not available.

The Court: Then you will have to establish that fact.

Q. By Mr. Hindin: At any rate, did Mr. Polakof declare to you that he was the owner of the property?

(Testimony of E. K. Albright.)

The Court: You have asked him that. He said Marvin Polakof never said anything about owning the property; never made any declaration one way or the other.

Q. By Mr. Hindin: Well, you had a conversation with Mr. Polakof, did you not, at the time you wanted him to sign this variance petition?

A. I just asked him to sign it. I told him that the zoning commission required the signature of the owner of the property for the requested variance.

Q. What did he say?

A. That he would come up and sign the petition—the request for the variance.

Q. Between 1935 and 1939 you leased the property for Mr. Polakof? A. Yes, sir. [66]

Q. Whom did you consult with reference to the terms of the lease? A. Mr. Sam Polakof.

Q. Who was it that leased the property?

A. The True-X Chemical Company.

Q. What was the rental value of the property at that time?

Mr. Victor Cogen: Just a minute. We object to it. The lease is the best evidence, if there was a lease.

The Witness: I have a copy here.

Q. By Mr. Hindin: Do you have a copy of the lease here?

A. Yes, sir.

(Testimony of E. K. Albright.)

Q. Will you produce it for us, please?

A. Here it is.

Q. Was the original of this lease signed in your presence? A. Yes, sir.

Q. By whom? A. Mr. Sam Polakof.

Q. Was Mr. Marvin Polakof there?

A. No, sir.

The Court: Sam signed it?

A. Sam; yes.

The Court: Who is Sam?

A. The father. The father of Marvin. [67]

Q. By Mr. Hindin: When you went up to the zoning commission who went with you, Sam or Marvin?

A. No; only Mr. Marvin Polakof.

Q. Marvin Polakof?

A. I had to go down and ask Mr. Sam Polakof that the owner must sign, and he told me that Marvin Polakof would come up and attend to that.

Mr. Victor Cogen: We object to that, your Honor. It is hearsay.

The Court: That is hearsay. It may go out.

Q. By Mr. Hindin: Was Mr. Marvin Polakof there when you had this conversation with Sam?

A. No. I arranged a meeting——

Mr. Victor Cogen: Just a minute.

Mr. Hindin: Pardon?

A. I arranged a meeting with Mr. Marvin Polakof for the variance of the zoning commission.

Q. I am talking about this other conversation

(Testimony of E. K. Albright.)
you had with Mr. Sam Polakof. Was Mr. Marvin Polakof there at the time? A. No.

Q. He wasn't? A. No.

Mr. Hindin: All right. That is all.

Cross Examination

Q. By Mr. Victor Cogen: Until the time that this [68] lease was signed in July 1936, was the property occupied or unoccupied?

A. It was unoccupied.

Q. Did you endeavor at that time to get a lease?

A. Just which of the periods do you mean?

Q. From 1935 until July, 1936.

A. It wasn't occupied.

Q. Did you endeavor during all that time to get a tenant? A. Yes.

Q. Did you obtain the best tenant you could get for the property? A. Yes.

Q. And the first part of the rental for that period for which the lease was signed was for \$50 a month? A. And taxes; yes, sir.

Q. In this lease do you remember whether or not there was an option to purchase? A. Yes, sir.

Q. And how much was that option to purchase for? A. \$6,500.

Q. At the time this lease was signed did you make any expression as to the fairness of that price? A. Yes. It was a low price.

Q. As a matter of fact, Mr. Albright, didn't you

(Testimony of E. K. Albright.)

induce the purchase of this property on the basis of speculation in condemnation proceedings? [69]

A. No, sir.

Q. Didn't you at that time, or a later time, make a statement or prepare a statement that the property was worth up to \$30,000, for condemnation proceedings? A. I did not.

Q. How high a valuation did you make it?

A. \$27,500.

Q. In condemnation proceedings?

A. Yes, sir.

Q. When was that value set?

A. In 1939, when the Santa Fe dam proceedings took about three years of negotiations. And the county appraised—they concurred in the general valuation, between twenty and twenty-seven thousand dollars. Then they changed the line of the dam and government agents then came along—the appraisers—and they reduced the appraised valuation, in their estimation, to \$17,000. And then the line was changed again on account of a great many factors which we had there; the dam was moved west; and they are not taking in any factory buildings at this time.

Q. Then you prepared a valuation for the appraisal of the land to the United States government, which was to be condemned for dam purposes—

A. Yes, sir.

Q. —at a price which you estimated to be \$27,000; is that right? [70] A. Yes, sir.

(Testimony of E. K. Albright.)

The Court: Of this same property?

Mr. Victor Cogen: Yes, sir.

The Witness: I built the building. It cost twenty-thousand dollars to build. We paid exactly \$22,500.

Mr. Victor Cogen: You are volunteering an answer, now.

Mr. Hindin: Let him explain that answer.

Mr. Victor Cogen: You can examine him on redirect, if you wish. I have no objection.

The Court: Well, the court takes almost judicial notice of the method in which they appraise property if they want to sell it to the federal government.

Q. Mr. Victor Cogen: As a matter of fact, the people who leased this property before, whom you describe as a chemical company, did not complete their lease, did they? A. They did not; no.

Q. They did not take up their option to purchase, did they? A. No, sir.

Q. This lease was signed by Sam Polakof, wasn't it? A. Sam Polakof; yes, sir.

Q. As the owner; is that true? A. Yes.

Q. You were dealing with him as the owner at that time, were you not?

A. With Sam Polakof. [71]

Q. Did Marvin Polakof ever pay any money for the purchase of that property to any escrow transaction, that you know of? A. No.

Q. Did you ever see any money come through Marvin Polakof's hands? A. No, sir.

(Testimony of E. K. Albright.)

Q. The money that you received went through the hands of Sam Polakof, did it not?

A. Yes, sir; Sam Polakof. My dealings were solely with Sam Polakof.

Q. Some time during April, May or June of 1939, did you come to my office? A. Yes, sir.

Q. With reference to this property?

A. Yes, sir.

Q. Did you tell me at that time that Ivan Polakof wanted to clear title to this property and you wanted me to go down to the Title Insurance Company and prove the title? A. Yes, sir.

Q. Did I then go down to the Title Insurance Company and spend the better part of a morning checking title with them? A. Yes, sir.

Q. Did I not clear up with them the question of a judgment of record against the property? [72]

Mr. Hindin: Just a second. We will object to that as being immaterial, as to what counsel did with the Title Company.

Mr. Victor Cogen: I am laying a foundation as to the knowledge of the owner.

The Court: I think it goes to his knowledge of ownership, because he has said Marvin was the owner.

Mr. Victor Cogen: He has already said Sam was the owner.

The Court: Yes. Go ahead. Proceed.

Mr. Victor Cogen: Read the question, Mr. Reporter.

(Question read by reporter.)

(Testimony of E. K. Albright.)

A. I wouldn't say they cleared it up.

Q. By Mr. Victor Cogen: Was it clear when you left the room? A. It wasn't.

Q. Didn't you leave the room in a high temper?

A. Yes.

Q. Because they wouldn't clear it up?

A. That wasn't the point.

Q. You heard about it a few days later and it was clear, wasn't it?

Mr. Hindin: I object to that as calling for a conclusion of the witness.

Q. By Mr. Victor Cogen: You were notified it was clear, weren't you?

The Court: We are getting far afield, counsel.

[73]

Q. By Mr. Victor Cogen: At that time you knew that Ivan Polakof was the owner, didn't you?

Mr. Hindin: Just a minute. I object to that as calling for a conclusion of the witness.

The Court: If he knows he can answer the question. Answer yes or no.

A. What was the question, please?

Q. By Mr. Victor Cogen: At the time you went up to the Title Company with me you knew that Ivan Polakof was the owner, did you not?

A. No, I did not. I asked about that and Mr. Sam Polakof told me that the title would have to be placed in Marvin Polakof's name on account of this business condition.

(Testimony of E. K. Albright.)

Mr. Victor Cogen: I object to that on the ground it is hearsay.

Mr. Hindin: I think it is very material.

Mr. Victor Cogen: There is no showing what parties were present, or anything else.

The Court: It is hearsay. You invited it, though.

Mr. Victor Cogen: I know it, your Honor.

The Court: Proceed.

The Witness: When Mr. Marvin Polakof——

Mr. Victor Cogen: Just a minute.

The Court: You have answered the question.

Mr. Hindin: There is no question now.

The Court: Proceed with your question. [74]

Q. By Mr. Victor Cogen: Mr. Albright, in 1935 this property was purchased, wasn't it?

A. Yes, sir.

Q. Did you handle the title? A. Yes, sir.

Q. In whose name was the title taken?

A. Marvin Polakof's.

Q. Then you had a deal in 1936? A. Yes.

Q. Then you had Sam Polakof as the owner?

A. I have a receipt saying, "Agent for Marvin Polakof."

Q. Do you have that receipt here?

A. A copy of it.

Mr. Hindin: May we see that?

The Witness: Yes.

Q. By Mr. Victor Cogen: Has this receipt ever been signed? A. Yes, sir.

(Testimony of E. K. Albright.)

Q. Was Mr. Ivan Polakof present at the time?

A. No, sir.

The Court: What are you talking about?

Mr. Victor Cogen: Some sort of a receipt. A blank receipt.

Q. Was Marvin Polakof present?

A. No; not when I gave him the check.

Q. I am asking you at the time you say a purported [75] receipt was signed. Do you have the original of that receipt? A. No.

Q. Where is the original of that receipt?

A. I haven't got it.

Q. Do you know where it is?

A. I gave it to the True-X Chemical Company.

Q. Do you know whether they still have it?

A. That I don't know.

Q. Was there only one original receipt?

A. Yes.

Q. And that, as far as you know, is in the possession of the True-X Chemical Company?

A. Yes.

Q. These dealings that you had were with Sam Polakof, weren't they? A. Yes, sir.

Q. Do you know Ivan Polakof?

A. Yes, sir.

Q. Did you have any dealings with him?

A. Yes.

Q. With reference to this property?

A. Yes, sir.

(Testimony of E. K. Albright.)

Q. When did you first talk to him?

A. Right after I sold the property to Mr. Polakof through the bankruptcy court. [76]

Q. Did you have any dealings with him in August, 1937?

A. I can't say definitely as to that particular date. Our dealings extended over a period of three or four years, nearly constantly, monthly.

The Court: What was the nature of your dealings with him?

A. Mr. Ivan Polakof became the record owner. Mr. Marvin Polakof intended to get married. He came to my office and asked us what he should do; that Marvin Polakof intended to get married and I told him it was better to have the property in his name; that you can't tell what is going to happen in a marital relation, and it would be better to have that property in Ivan Polakof's name, he being a single man. That was then done.

The Court: Who was present when that conversation took place?

A. No one. He came to my office.

The Court: Who did?

A. Mr. Ivan Polakof.

The Court: Why did you suggest putting it in his name?

A. Well, we discussed that. I suggested it for the reason that Marvin intended to get married, and he was apprehensive as to what was apt to hap-

(Testimony of E. K. Albright.)

pen, and they wanted to keep that property intact in their own family.

The Court: Who told you that?

A. Ivan Polakof. [77]

The Court: Gentlemen, we can't finish before noon. We will take a recess at this time until 2 o'clock.

Mr. Hindin: Your Honor, would you care to instruct the defendant, Marvin Polakof, to return this afternoon?

The Court: All witnesses present here are directed to return at 2 o'clock.

(An adjournment was taken until 2 o'clock p. m. of this same day.) [78]

Afternoon Session

2:00 O'clock.

E. K. ALBRIGHT

Recalled.

Cross Examination resumed.

The Court: Proceed, gentlemen.

Q. By Mr. Victor Cogen: Mr. Albright, I just want to clear up one statement you made. When Ivan came to see you in reference to that property he made a statement to you that Mr. Marvin Polakof was about to be married—

A. Yes, sir.

Q. Or going to get married?

A. Yes, sir.

(Testimony of E. K. Albright.)

Q. A deed was drawn then? A. Yes.

Q. Did you prepare it?

A. I did; yes, sir.

Q. And that deed was a transfer of property from Marvin to Ivan? A. Yes, sir.

Q. Do you recall about what date that was?

A. No, I don't. I know I notarized that. The recordings are in another court, and I am unable to ascertain the date.

The Court: Wasn't that deed executed as of that date?

Mr. Victor Cogen: Yes. I just want to call attention [79] to the dates. I have the original deed, so we can use that instead of the photostatic copy.

Q. Mr. Albright, I have a deed, which is the same as Plaintiff's Exhibit 3. This is the original deed, and I note the date is the 26th day of August, 1937. Would you say that was about the date that Mr. Ivan Polakof came to you and talked to you about the fact that Mr. Marvin Polakof was getting married and he wanted to have the property transferred from Marvin to himself to avoid any complications with Marvin's future wife?

A. That not being my writing over here, I am somewhat in doubt—I did not write this here.

Q. Is this the deed that you prepared?

A. Yes, sir.

Q. I will ask you to look on the reverse side thereof. You will notice that there is a notary acknowledgment? A. Yes.

(Testimony of E. K. Albright.)

Q. In Nebraska, in the County of Douglas, on the 26th day of August, 1937, Marvin Polakof appeared before this notary, Mr. Darner, I think, that is—as close as I can get to it. Does that fix the time in your mind as to the date on which Ivan talked to you? A. Yes; that is the time.

Q. You know, of course, that Marvin married in the early part of 1938?

Mr. Hindin: If you know. [80]

A. That I don't know. The only way I can fix the date, at that time in 1937 I just moved in my new house in June, and the transaction took place in my new house.

Q. By Mr. Victor Cogen: That would be approximately in June, 1937?

A. In June I moved in my new house.

The Court: It would be after June?

A. In June, 1937, I moved into my new house, and the transaction took place in my new house. Therefore, I fix the date about June, 1937.

Q. By Mr. Victor Cogen: Ivan told you at that time he wanted the property transferred so there would be no complications with Marvin's future wife? A. That is correct.

Q. And when they were married he didn't want anything to happen to affect the ownership of the property by reason of the marriage? A. Yes.

Mr. Victor Cogen: That is all. May we have this exhibit for identification?

(Testimony of E. K. Albright.)

Mr. Hindin: We have a certified copy of the document already in the record, counsel.

Mr. Victor Cogen: Well, I am satisfied, if counsel is, that it is a certified copy of the original.

Mr. Hindin: Yes. Counsel, there are one or two more questions I want to ask him, but before I do that I want to [81] offer this certified copy of a power of attorney given from Marvin Polakof to Sam Polakof.

The Clerk: Plaintiff's Exhibit 4.

PLAINTIFF'S EXHIBIT 4

Book 14312 Page 122 Official Records

Power of Attorney General

Know All Men by These Presents: That I, Marvin Polakof residing at 2231 Branden St., in the City of Los Angeles, County of Los Angeles, and in State of California, have made, constituted, and appointed, and by these presents do make, constitute and appoint Sam Polakof residing at 2231 Branden St., in the City of Los Angeles, County of Los Angeles, State of California, my true and lawful Attorney for me and in my name, place, and stead, and for my use and benefit, to ask, demand, sue for, recover, collect, and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever as are now or shall hereafter become due, owing, payable or belonging to me and have, use and take all lawful ways and means in my name or other-

(Testimony of E. K. Albright.)

wise for the recovery thereof, by attachments, arrests, distress, or otherwise, and to compromise and agree for the same and acquittances or other sufficient discharges for the same for me and in my name, to make seal, and deliver; to bargain, contract, agree for, purchase, receive, and take lands, tenements, hereditaments, and accept the seizin and possession of all lands, and all deeds and other assurances, in the law therefor and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements, and hereditaments, upon such terms and conditions, and under such covenants as he shall think fit. Also to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares, and merchandise, choses in action, and other property in possession or in action, and to make do, and transact all and every kind of business of what nature or kind soever, and also for me and in my name, and as my act and deed, to sign, seal, execute, deliver and acknowledge such deeds, leases and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter-parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgage, judgment and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises. Giving and Granting unto

(Testimony of E. K. Albright.)

my said Attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present hereby ratifying all that my said Attorney Sam Polakof shall lawfully do or cause to be done by virtue of these presents.

In Witness Whereof, I have hereunto set my hand and seal the 18th day of July, nineteen hundred and 36.

MARVIN POLAKOF

State of California,
County of Los Angeles—ss.

On this 18th day of July, A. D., 1936, before me, C. R. Pearman, a Notary Public in and for said County and State, personally appeared Marvin Polakof, known to me, (or proved to me on the oath of—) to be the person whose name—subscribed to the within Instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Notarial Seal)

C. R. PEARMAN,

Notary Public in and for said County and State.

Notary Public in and for the County of Los Angeles, State of California.

(Testimony of E. K. Albright.)

#974. Copy of original recorded at request of Appointee, July 29, 1936, 1:21 PM. Copyist #114. Compared. C. L. Logan, County Recorder, By S. D. Terry 8 Deputy
\$1.00-6 s.

Mr. Hindin: Also, I would like to file this subpoena and return thereof for the True-X Chemical Company.

Mr. Victor Cogen: Counsel, if you will state the purpose to the court I may not object to the introduction of it.

Mr. Hindin: The purpose, if the court please, is to lay a foundation for the introduction of secondary evidence, namely, a receipt.

Mr. Victor Cogen: If the court please, I am going to object to that as a pure conclusion of the marshal, Mr. Clark, by his deputy, as receiving a subpoena on the 14th day of October, 1941—that is the date, isn't it?

Mr. Hindin: Yes.

Mr. Victor Cogen: And that he has checked the city and telephone directory and can't find them. I submit, your Honor, that it should not be permitted to be introduced for any purpose.

Mr. Hindin: It is a matter of official record, your Honor.

The Court: That will be filed. It isn't much foundation, counsel. I know how easy it is to get this.

(Testimony of E. K. Albright.)

Redirect Examination

Q. By Mr. Hindin: Now, one or two more questions, [82] Mr. Albright. You testified that you had a conversation with Mr. Sam Polakof with reference to this property; is that correct?

A. I had several conversations.

Q. With Mr. Sam Polakof?

A. Yes. Nearly all of them.

Q. Did Mr. Sam Polakof tell you that he held a power of attorney from Marvin Polakof to act for that property?

Mr. Victor Cogen: If your Honor please, that is objected to as hearsay.

The Court: Objection sustained.

Q. By Mr. Hindin: Did either Marvin Polakof or Sam Polakof show you a power of attorney from Marvin to Sam?

Mr. Victor Cogen: I object to that on the ground that it is a double question, your Honor.

The Court: It is a technical objection. Overruled.

Mr. Victor Cogen: What Sam Polakof did is one thing. What Marvin Polakof did is entirely another matter. And one objection would be good; the other wouldn't.

The Court: I will overrule the objection.

Mr. Hindin: Will you repeat the question?

(Question read by reporter.)

The Court: Do you know anything about a power of attorney that Sam had?

(Testimony of E. K. Albright.)

A. Yes, sir.

Q. By the Court: From whom did you learn that? [83]

A. I bought a water stock from the—this company had no water stock and I negotiated a deal for the purchase of the water stock. He gave me a check first, then I took the rest of the money from the rental of the property and applied it on the purchase of the water stock and issued it to him. It was to be issued to—

The Court: Who was that?

A. Our water company. The secretary of the water company said—

The Court: We don't care what they told you; but did you talk to Marvin about that?

A. No, I didn't.

The Court: Who did you talk to?

A. To Mr. Ivan and to Mr. Polakof. Mr. Polakof told me he has a power—

The Court: Wait a minute. That is Sam?

A. That is Sam, yes.

The Court: Did you talk to Ivan?

A. I talked to Ivan.

The Court: What was the conversation with Ivan about?

A. The issue, again, of the water stock came up, and I asked to whom to make that water stock out. He said to make it—I said, "Shall I make it out to Sam Polakof or Marvin Polakof?" He said,

(Testimony of E. K. Albright.)

"It doesn't matter, because my father has the power of attorney from Marvin." And when Mr. Polakof came in I asked him about that. [84]

The Court: We don't care about that. That is Sam?

A. Sam, yes. But I knew there was a power of attorney.

Mr. Hindin: Your Honor, I want to call this fact to your Honor's attention: That here we have a document of record whereby Sam Polakof is given a power of attorney to act as attorney in fact for Marvin Polakof with reference to this property. Any acts or statements made by Sam Polakof with reference to and under this power of attorney, I submit under the authorities they are binding as an admission against interest, against this defendant, Marvin Polakof.

The Court: I will be glad to listen to your authorities.

Mr. Victor Cogen: I have the stock here. It is made out to Ivan Polakof, as of October 11, 1937. If they want to go into that and show that he received instructions to put it in Ivan's name, I am perfectly willing, because it substantiates our statement.

The Court: Proceed.

Mr. Hindin: That isn't the purpose, at all.

Q. Let me ask you this, Mr. Albright: After Marvin got this property you negotiated this lease.

(Testimony of E. K. Albright.)

that you testified to this morning, to the True-X Chemical Company; is that correct?

A. Yes, sir.

Q. Now, did the True-X Chemical Company ever take [85] possession of that property?

A. Yes, sir.

Q. How long were they in that property?

A. About a year and a half.

Q. Are they in business now, do you know?

A. They are not in business now.

Q. When did they go out of business?

A. In the fall of 1938.

Q. Did you know the members of that business?

A. Yes, sir.

Q. Are they available in Los Angeles County now?

A. I know the address of one; Mr. Newhouse; he is in Glendale. But I just looked at my memorandum. I haven't got it here. I have it in my office.

Q. But the True-X Chemical Company has been out of business since 1938?

A. Yes, sir.

Q. This receipt that you identified this morning, do you have that with you now?

A. You mean a copy of that receipt?

Q. Yes. A. Yes.

Q. Thank you. There was an original of that receipt made, was there not? A. Yes, sir.

(Testimony of E. K. Albright.)

Q. Was that original made at the same time that this [86] copy was made?

A. Yes. I made it.

Q. Was it made by the same stroke of the type-writer keys?

A. Yes; I had a carbon there and typed it.

Q. And the original and this copy were made at one and the same time? A. Yes.

The Court: One is a carbon copy of the other?

A. Yes, sir.

Q. By Mr. Hindin: What became of the original of that?

The Court: He testified he delivered it to the chemical company.

Mr. Hindin: That is right.

Q. Was the original signed in your presence?

A. Yes, sir.

Q. By whom? A. By Mr. Sam Polakof.

Mr. Victor Cogen: Pardon me, your Honor. I would like to enter an objection. I object to it on the ground that it isn't the best evidence. The original document is the best evidence, and there has been no showing—

Mr. Hindin: I haven't offered this in evidence.

Mr. Victor Cogen: You are asking the question. And the evidence indicates that the True-X Chemical Company had a representative in Mr. Newhouse. [87]

The Court: Gentlemen, are we going to get down to facts?

(Testimony of E. K. Albright.)

Mr. Victor Cogen: I want to get down to facts as soon as possible, your Honor.

The Court: Do you deny that Sam - Polakof signed this receipt?

Mr. Victor Cogen: I have never seen the original or have I ever seen the copy.

The Court: Have you reason to deny it? This man was acting as agent for the whole group, wasn't he?

Mr. Victor Cogen: I couldn't say.

The Court: He was acting as agent for somebody there.

Mr. Victor Cogen: He was acting as agent for somebody there, but I couldn't say for all the family.

The Court: But there are three members of the family.

Mr. Victor Cogen: That is right.

The Court: And he was acting as agent for the property, to find them a tenant.

Mr. Victor Cogen: Without indicating who he was acting for.

The Court: Well, I want to find out pretty soon. Try to do that.

Mr. Victor Cogen: Yes.

Q. By Mr. Hindin: I say, Mr. Sam Polakof signed that in your presence; is that correct?

A. Yes. When the check was brought into my office, [88] Mr. Newhouse——

(Testimony of E. K. Albright.)

The Court: I don't think it proves anything, one way or the other.

Mr. Hindin: I will offer this in evidence as secondary evidence. The foundation having been laid that it is impossible to produce the original.

Mr. Victor Cogen: We object to it on the ground that it isn't the best evidence.

The Court: I think there is sufficient foundation, but I can't see whether or not it is very material. In a case like this you generally let evidence in and see what you have got when you get through.

The Clerk: Exhibit 5.

PLAINTIFF'S EXHIBIT 5

May 10, 1938.

Received from Mr. H. C. Kendall, Mr. C. E. Crosby, and Mr. Frank Newhouse, Check for the amount of \$189.69 (One-Hundred-Eighty-Nine) Dollars and 69 cents as payment for the rental for the Factory Building, located on Corner 4th, Street and French Av, County of Los Angeles.

The Rentel is for the period of from the first day of April, to the first day of June, 1938, comprising the Sum of \$120.00. The difference of the \$120.00 and the amount of the Check \$189.69, is for the payment of the Taxes which the Tenants are paying under the term of the Lease.

Agent for Mr. Marvin Polacoff

(Testimony of E. K. Albright.)

Q. By Mr. Hindin: Mr. Albright, are you familiar with the assessed valuation of that property. A. Yes, sir.

Q. Do you have the original tax bills for the year 1938 in your posession for that property?

A. Just one.

Q. Just one. For the year 1938?

A. 1938-1939.

Q. For 1938-1939. How did you come in possession of that tax bill?

A. I paid the taxes for the property.

Q. You did?

A. Yes. The True-X Chemical Company would give me a [89] check and I paid the taxes.

Q. That was during the period of their tenancy?

A. Yes, sir.

Mr. Hindin: I offer this in evidence.

The Court: What does it show the assessed valuation? That is the only thing we are interested in.

Mr. Hindin: It shows the assessed valuation at \$4,600.

Q. Is that correct? A. Yes.

The Court: How much is the real estate?

Mr. Hindin: The real estate \$660; improvements \$3,940; total \$4,600. Do I take it from your Honor's statement—

The Court: I don't think it is necessary to introduce it in evidence, unless counsel wants it.

Mr. Victor Cogen: I don't see any particular reason for it.

(Testimony of E. K. Albright.)

Q. By Mr. Hindin: To whom is that property assessed as the legal owner?

Mr. Victor Cogen: We object to that, your Honor.

The Court: That isn't evidence of the record title, counsel. We have the legal title before us; the deeds.

Mr. Hindin: That is all.

The Court: Mr. Albright, you originally owned this property, as I understand?

A. No, your Honor. I just built the building. I am a subdivider by profession, and I took a large area of [90] property and built four factories there for the purpose of starting building that thing up, and one of the factories was on this Polakof property, which was built for the California Law Publishing Company. When the Mortgage Realty Company became insolvent then I bought this property in court for Mr. Polakof and Mr. Fratkin.

The Court: You bought it—

A. In the bankruptcy court.

The Court: You bought it in the bankruptcy court for these two men? A. Yes.

The Court: Did you handle the whole transaction? A. Yes, sir.

The Court: Did you handle the money?

A. Yes, sir.

The Court: From whom did you get the money?

A. From Mr. Fratkin and Mr. Polakof. These two were partners. They bought the property orig-

(Testimony of E. K. Albright.)

inally for \$2,650. Mr. Polakof and Mr. Fratkin became partners.

The Court: Each put up half the money?

A. Each put up half the money.

The Court: You bought the property at that time, and, as I understand, it was vacant then for about eight months? A. About a year.

The Court: Then you rented it to the chemical company?

A. I leased it to the chemical company. [91]

The Court: And this receipt you are talking about was for the first payment of the rent?

A. That was the last payment of the rent. They just put up \$300. They took an option to purchase the property for \$6,500.

The Court: They put up \$300 cash?

A. Yes, sir.

The Court: What did you do with that \$300?

A. I gave it to Sam Polakof.

The Court: You gave it to Sam Polakof?

A. Sam Polakof. Including rent and option money.

The Court: All the rent you collected you gave to Mr. Sam Polakof?

A. To Mr. Sam Polakof, yes, sir.

The Court: Did you ever have any transaction with reference to this property with Marvin?

A. No, sir.

The Court: Did Marvin ever talk to you about the property?

(Testimony of E. K. Albright.)

A. Yes. He came over to visit us once in a while. They were building boats after the boat plant moved in, and Mr. Polakof built two boats over there for his own account. And they came over, usually Sundays, and visited. Marvin came over there with his wife and I met Mr. Marvin Polakof. After that I needed some variance in zoning—wanted to change the zoning ordinance, and I met Mr. Marvin [92] there. That was about the only business I had with Marvin.

The Court: With reference to this original deed, did this other party transfer to Marvin?

Mr. Hindin: Which party, Fratkin?

The Court: Yes.

Mr. Hindin: Yes.

Mr. Victor Cogen: In 1936, wasn't it?

Mr. Hindin: I don't know.

The Court: Did you know Mr. Fratkin sold the property to Marvin?

A. Yes, sir. Mr. Fratkin came over and consulted me about it.

The Court: Who told you to put it in the name of Marvin? A. Mr. Sam Polakof.

The Court: Was anything said at that time as to where the money was coming from?

A. Your Honor, I don't understand. Which money? The money that came from where?

The Court: The money that Sam Polakof put up. Did he tell you where the money came from?

(Testimony of E. K. Albright.)

A. No; he didn't say. He hypothecated—made a loan. The first original price was \$2,650. Mr. Fratkin put one-half; then Mr. Polakof put up \$500; then Mr. Polakof signed a mortgage for \$1,000 payable to Mr. Fratkin. That was the total purchase price. Then after, Fratkin wasn't satisfied [93] because he couldn't lease this building right away; and then he sold his interest to Mr. Polakof and then he became the sole owner—Mr. Marvin Polakof then became the sole owner.

The Court: As far as you know, then, Marvin has never exercised any supervision over the property himself, has he? A. Never.

The Court: As far as you know it has always been Sam? A. Sam Polakof.

The Court: What have you known about Ivan being in the picture?

A. Ivan was more active. Ivan was always more active. My negotiations was nearly always with Ivan when Sam Polakof wasn't around. He was more active than Marvin.

The Court: How did you come to have the water stock in Ivan's name?

A. The water rental was delinquent and I couldn't get any money from anyone to pay the water money, so I took Ivan over to the president of the water company and he promised to pay the water. It would be, then, about \$65 in arrears on the water payment. So I took Ivan over to the water president; he had ordered me to shut the

(Testimony of E. K. Albright.)

water off; and Ivan promised to give me \$32.50 and to give me another \$32.50 right away. That was three years ago. I haven't got it yet. When I bought the water stock Mr. Sam Polakof gave me \$50, then I prepared the assignment of the rental [94] of the building to Mrs. Kenney, the owner of the water stock, and I authorized Mrs. Kenney to issue the water stock when the total sum of \$400 had been paid, at which time the secretary was authorized to make a certificate to Mr. Ivan Polakof, because that was the man that owed for the water bill, and Ivan Polakof paid this \$32.50. There wasn't any reference at all as to whom to make it out to, so he said to make it out to Mr. Ivan Polakof.

The Court: Who said?

A. Mr. Sam Polakof.

The Court: Then, as I understand, Sam and Ivan have been the active ones in this property?

A. Yes.

The Court: And Marvin has not been taking an active part? A. No.

The Court: When was this conversation that you had with Ivan concerning the transfer of the property to him?

A. That was prior to the marriage of Marvin.

The Court: Who was present at that time?

A. Only Mr. Ivan. Mr. Ivan Polakof and myself.

The Court: How did you come to be discussing it?

(Testimony of E. K. Albright.)

A. We were very friendly. Sam Polakof was a very good friend of mine and we were rather very close friends, and whatever came up—he discussed a lot of personal matters with me, and private matters, construction and [95] building and lease, and so on, and whenever he had any difficulty then he came to me. If he wanted to borrow money and make a loan then I endeavored to hypothecate the property if I could. And we became rather chummy. Very often he brought to me letters which he read to me, telling me his difficulties, and that was one of the reasons we were very close. The change in the property occurred when Ivan came over and told me his brother was apt to get married and he was apprehensive as to the marital difficulties which might arise. So then I suggested that they deed this property to Ivan from Marvin.

The Court: Was anything said at that time as to who owned the property?

A. We knew who owned the property. That did not have to be discussed. We knew it was Sam Polakof and we didn't have to discuss that. We knew the true picture.

The Court: But you knew it was in Marvin's name? A. Yes.

The Court: Then you didn't know who actually owned the property?

A. Except from the record.

The Court: All you knew was who was the record owner?

(Testimony of E. K. Albright.)

A. The record owner; that is right.

The Court: Was there any discussion at that time in which Ivan made any comment about, "I have money in that property", or something to that effect? [96]

A. No, he did not.

The Court: Or, "My father has some money in it"?

A. No; he did not say that. He took it for granted I knew the situation.

The Court: You didn't know whose money went originally into it?

A. Mr. Sam Polakof. He had it.

The Court: But you don't know whether Mr. Marvin Polakof has any money in the property or not?

A. No.

Recross Examination

Q. By Mr. Victor Cogen: Mr. Albright, this stock counsel didn't want to ask you about, do you know what this is?

A. Yes, sir.

Q. Just tell the court, because I don't want it introduced in evidence.

The Court: He has already testified it is a certificate of water stock.

Mr. Victor Cogen: Yes.

The Court: What is the date of it?

Mr. Victor Cogen: October 11, 1937.

Q. Mr. Albright, this deed that was made from Marvin to Ivan was about June or July or August,

(Testimony of E. K. Albright.)

1937, transferring the property from Marvin to Ivan; isn't that right? A. Yes, sir. [97]

Q. And isn't that the reason why the stock, which was issued about a month or two after the transfer was made in 1937, was issued in Ivan's name, because he was the owner of the stock and the stock had to run with the land; isn't that right?

A. That is right.

Q. And that is why it was made in Ivan's name?

A. Yes.

The Court: Any further questions?

Mr. Victor Cogen: No further questions.

Mr. Hindin: I would like to make a motion to strike that last, on the ground that it calls for a conclusion of the witness.

Mr. Victor Cogen: I think it is merely clarifying what he said before.

The Court: Does the stock certificate itself show the purpose?

Mr. Victor Cogen: I will read it to your Honor.

The Court: Let me see it.

Mr. Hindin: The last three questions, your Honor, have gone to the question of who was the owner. That may or may not reveal it, and the question is one that calls for a conclusion of the witness.

(Testimony of E. K. Albright.)

The Court: Well, why don't you introduce that stock certificate, and you can withdraw it by substituting a photostatic copy. [98]

Mr. Victor Cogen: I will be glad to.

Mr. Hindin: To which we object on the ground that no proper foundation has been laid, and I move to strike the answer of the witness to the last three questions on the ground that they call for and are conclusions.

The Court: Well, the stock certificate shows it is pertinent to this, so I am going to deny the motion. This stock certificate corrects any conclusion. It may be introduced in evidence.

The Clerk: Defendants' Exhibit A.

Defendant's exhibit A is a Stock Certificate #42 for five shares of Connemara Mutual Water Co., issued to Ivan Polakof dated October 11, 1937.

Mr. Victor Cogen: That is all, Mr. Albright.

Mr. Hindin: May we have a stipulation, counsel, that Mr. Sam Polakof died in the interim?

Mr. Victor Cogen: I think he died some time in June or July, 1940—May 3, 1940.

Mr. Hindin: May we have a stipulation that Mr. Sam Polakof died May 3, 1940?

Mr. Victor Cogen: Yes.

Mr. Hindin: At this time I would like to offer a certificate of the county clerk.

The Court: What is it?

(Testimony of E. K. Albright.)

Mr. Hindin: A certificate by the county clerk of Los Angeles County that there has been no probate of the estate of Sam Polakof.

Mr. Victor Cogen: I might say there was no estate, so there could be no probate. There have been no papers filed [99] for the probate of the estate of Sam Polakof.

Mr. Hindin: Counsel, may we have a stipulation that Mr. Gustave Goldstein is the duly elected, qualified and acting trustee in bankruptcy, and may we also have a stipulation that there are now not sufficient funds in the hands of the trustee in bankruptcy to pay the claims of the creditors who have filed and proven claims?

Mr. Victor Cogen: Yes; we will so stipulate.

Mr. Hindin: That is, in the bankruptcy case of Marvin Polakof, doing business as Ace Distributing Company?

Mr. Victor Cogen: That is correct.

Mr. Hindin: So stipulated?

Mr. Victor Cogen: So stipulate.

Mr. Hindin: Now, your Honor, we have in our possession the two documents that—

The Court: May I see them?

Mr. Hindin: We would like to offer them in evidence when the proper time comes—

Mr. Victor Cogen: I am going to object to the introduction—

Mr. Hindin: Wait a minute. Mr. Graeber was on the stand, subject to cross examination by yourself. [100]

H. E. GRAEBER, recalled.

Cross Examination
Resumed.

Q. By Mr. Victor Cogen: Mr. Graeber, do you have any statement, or were there ever any statements issued to the Acampo Winery as a basis for credit established by Marvin Polakof, when Mr. Marvin Polakof first started doing business with the Acampo Winery?

A. I don't know that.

Q. Have you checked the records to see whether there are any statements in the files of the Acampo Winery? A. Yes, sir.

Q. Outside of this one statement that the Judge is reading now, have you been able to find any other statements?

A. Do you mean statements given us by Mr. Polakof?

Q. Yes. A. No. That is the only one.

Q. That is the only one. You did a business of about \$5,000 a month with Mr. Polakof?

A. That is right.

Q. And you did not receive any financial statements from him in the year 1935, 1936, 1937, 1938 or 1939?

A. No. At least none that are on file in our office at present.

Q. Then, when you did give Marvin Polakof credit you did not do it on the basis of a written statement showing the ownership of the property out in Baldwin Park? [101]

(Testimony of H. E. Graeber.)

A. I don't believe I am in a position to answer that question, because I didn't pass on the credit of that account. It was done by other officers of the corporation.

Q. Do you know the name of the licensee with whom your firm was doing business; that is, the licensee of Ace Distributing Company?

A. All I know is that our invoices were made to the Ace Distributing Company.

Q. Under the State law of California it is necessary when you sell liquor from a winery to a wholesaler you have to sell it only to a licensee?

Mr. Hindin: Just a second. Is that a question or a statement?

Mr. Victor Cogen: I am asking if he knows that as a fact.

A. From personal knowledge, no.

Mr. Hindin: I object to that as calling for a conclusion of the witness. If it is a matter of State law, that is what it is. The court would take judicial notice of that fact, if that is the fact.

The Court: But sometimes we are supposed to take judicial notice of State laws we don't know anything about.

Mr. Victor Cogen: Will counsel stipulate that that is a law of the State of California, that liquor can only be sold by wineries to an authorized licensed wholesaler?

Mr. Hindin: Or his representative. We will so [102] stipulate.

(Testimony of H. E. Graeber.)

Mr. Victor Cogen: What is the representative? I don't understand that.

Mr. Hindin: They can sell it to a man licensed to purchase the liquor, or his authorized representative.

Mr. Victor Cogen: I don't know about the authorized representative. I know you can sell it to the authorized licensee.

Q. Did you know in whose name the license was taken for the Ace Distributing Company?

A. I have heard it. From personal knowledge I don't know. In other words, I never saw the license, but I understood—

The Court: You will have to speak a little louder. I can't hear you.

A. I understood it was in the name of Mr. Marvin Polakof.

Q. By Mr. Victor Cogen: Marvin Polakof was a licensee? A. Yes.

Q. Doing business as the Ace Distributing Company?

A. That is the way it was understood; yes.

Q. In June, 1940, there was indebtedness from the Ace Distributing Company to the Acampo Winery and there was a little difficulty at that time, wasn't there? A. Yes.

Q. Mr. Bokofsky became associated with the Ace [103] Distributing Company; is that correct?

A. That is right.

(Testimony of H. E. Graeber.)

Q. And there was an agreement made between Mr. Bokofsy and the Acampo Winery in reference to the indebtedness of the Ace Distributing Company, wasn't there?

Mr. Hindin: Just a second. We will object to that on the ground that there is no proper foundation laid, in that there is no showing what these agreements are supposed to have contained or who made them, or whether they were written or oral.

Mr. Victor Cogen: I may state for counsel's benefit that it is an agreement made some time in June or July, 1940. Is the agreement there?

Mr. Hindin: Is this the one?

Mr. Victor Cogen: That may not be the only agreement. There were two or three agreements, as I understand.

The Court: I am a stickler for the best evidence.

Mr. Victor Cogen: All right. I will be glad to do it, your Honor.

Q. Have you ever seen this instrument before?

A. Yes, sir.

Q. Who were the parties to it?

A. Acampo Winery and Mr. Bokofsy.

Q. Yes. The items referred to in that, the indebtedness of the Ace Distributing Company as of this particular date— [104]

A. It refers—

Q. —of August, 1940?

A. The agreement does not mention the indebtedness. It refers to it.

(Testimony of H. E. Graeber.)

Q. It refers to the indebtedness?

A. It does not mention the amount. Yes; it refers to it.

Q. At that time the Acampo Winery took 12 notes from the Ace Distributing Company amounting to approximately \$6,000; isn't that correct?

A. Trade acceptances.

Q. Trade acceptances? A. Yes, sir.

Q. And those trade acceptances were guaranteed by Percy Bokofsy?

A. Well, they were signed by him. I don't know whether—

Q. Do you have the originals here?

A. Aren't they attached to the claim?

Q. I don't know.

Mr. Hindin: Some of them are attached to the claim.

The Witness: I do not have them.

Q. By Mr. Victor Cogen: Are these the photostatic copies of the trade acceptances that are referred to in this agreement of August 14, 1940, that I have just been asking you about?

A. Some of them are. Let's see. They are the [105] balances of—here is one. These are the photostatic copies of trade acceptances representing the balance due from Ace. I don't find any of those \$500 ones. Here they are. Yes; these are the ones. That is correct.

Mr. Victor Cogen: Counsel, is it all right to refer to these photostatic copies, instead of the originals?

(Testimony of H. E. Graeber.)

Mr. Hindin: Yes. For the purpose of identification, those are the photostatic copies referred to or attached to the claims of the Acampo Winery which have heretofore been filed in the bankruptcy court and which have been offered by reference this morning.

Q. By Mr. Victor Cogen: When these trade acceptances were received they were taken in accordance with this agreement that I have just referred to, the one that is in front of you?

A. Yes.

Q. Thereafter some of these trade acceptances were paid, weren't they? A. Yes.

Q. You received \$2,000 in toto?

A. Yes; for trade acceptances.

Q. For trade acceptances. There is an indebtedness owing from the defendants. That referred to the indebtedness prior to April, 1939?

A. Yes.

Q. And \$2,000 would be more than sufficient to pay that? [106]

The Court: That is a conclusion.

Mr. Victor Cogen: Well, I will ask it another way.

The Court: You don't have to ask the question if \$2,000 will pay a \$1,000 bill.

Mr. Victor Cogen: All right, your Honor.

Q. Did you receive instructions from Mr. Marvin Polakof to apply the two thousand dollars to the indebtedness after April 24, 1939?

(Testimony of H. E. Graeber.)

A. No, sir.

Q. You merely applied it on the account; is that correct? A. Yes.

Q. Do you have the running account, the original ledger sheet or a copy of your ledger sheet?

A. Of their account?

Q. Yes.

A. The Ace account. Yes, sir.

Q. May I see that?

A. This is the accounts receivable. This is the trade acceptance record.

Q. In referring to these documents did they state how much merchandise was bought by the Ace Distributing Company from July 1st?

The Court: Where is that running account?

A. These are the accounts receivable and these are the trade acceptances.

The Court: That is the trade acceptance? [107]

A. Yes.

The Court: The trade acceptances cover the—

A. Perhaps I should explain.

The Court: The trade acceptances simply cover the items that are in here?

A. Yes. In other words, when a trade acceptance is received the account is credited and the trade acceptance record is set up.

The Court: Is that what this balance refers to?

A. That is right. That is in the open account.

The Court: And the trade acceptances are trade acceptances to cover that item, or should be?

(Testimony of H. E. Graeber.)

A. This would be in addition to the trade acceptance balance.

The Court: In addition?

A. As of July 1st there were trade acceptances not executed, but that figure there, the balance of the indebtedness, was made up by the balance of the trade acceptances shown outstanding.

The Court: All right. Proceed.

Q. By Mr. Victor Cogen: For the purpose of the record and to avoid putting all these documents in the record, what is your balance on the open account of the Ace Distributing Company as of the end of 1940?

A. It was \$217.51.

Q. Prior to or subsequent to April? For what period of [108] time is this \$217.51 unpaid?

A. I think that represents a cooperage balance. It couldn't have been much more than 90 or 120 days, perhaps.

Q. That would be for moneys owed at least during the year 1940; not before that? A. Yes.

Q. You have a trade acceptance ledger. Maybe I had better ask you during the recess what that represents.

Mr. Hindin: May I take the witness over. I think I can clear that up very quickly.

Q. By Mr. Victor Cogen: What is this 8471?

A. Well, the amount owed as of November 8th was \$8,471.29. It shows November 8, 1940 here.

(Testimony of H. E. Graeber.)

Q. What is the earliest trade acceptance for which this amount represents unpaid—

A. I think it was one of those issued on the bottled wine, which would be about November, 1938, if I am not mistaken.

Q. Can you trace that? A. Yes.

The Court: It doesn't do much good to the court just to talk among yourselves over there.

Mr. Victor Cogen: We had better stand away from the witness.

Redirect Examination

Q. By Mr. Hindin: I am calling attention to the trade [109] acceptance ledger sheets. Will you indicate from this trade acceptance ledger sheet when these first unpaid trade acceptances were given, that you now hold? Does it appear in this ledger?

A. Yes, it appears in this ledger, but in order to pick it out I would have to have the list of outstanding items, so I could show it to you in here. I think it was \$868.40. If my memory serves me right, these two trade acceptances were both outstanding.

Q. These both were outstanding in January, 1939, and were unpaid as of April 24, 1939?

A. Beg Pardon. They were given us in January, 1940.

Q. I see.

A. But it was for a purchase that was made in 1938.

(Testimony of H. E. Graeber.)

Q. I see. In other words, it was unpaid—

The Court: Were there renewals of old trade acceptances?

A. No, sir. This is a deal on some bottled wine, which Ace Distributing Company had in their inventory for a long time before they gave us negotiable documents as settlement. In other words, the wine moved in there in 1938 and we didn't receive a trade acceptance covering it until 1940.

Q. By Mr. Hindin: In other words, then, as of April 24, 1939, there was an account payable on these particular items of \$568.40; is that correct?

The Court: That isn't a fair statement, counsel. He said they were taking trade acceptances and they were [110] using those in lieu of the accounts, so the indebtedness was then on the trade acceptance.

Mr. Hindin: But they hadn't gotten those until 1940.

Mr. Victor Cogen: Well, they took them in 1940.

Q. By Mr. Hindin: Here is the only question I want to make clear: As of April 24, 1939, what was the condition; you did not have trade acceptances yet due?

A. It was carried as an open account at that time.

Q. And that open account was unpaid at that date? A. Yes, sir.

Q. Are there any other items from that record that would indicate any other items that were unpaid as of April 24, 1939?

(Testimony of H. E. Graeber.)

A. I would have to have our claims so that I could find the dates of those outstanding acceptances.

Q. All right. We will try to get them for you here. After you accepted trade acceptances, until those trade acceptances were paid, there still was an unpaid balance due you, wasn't there?

Mr. Victor Cogen: Just a minute. I think the court can understand what the witness has already said; they accepted the trade acceptances and canceled out the open account.

Mr. Hindin: But then there was an unpaid balance on the trade acceptances.

The Court: His testimony was that they were accepting [111] negotiable instruments and were transferring it.

Mr. Victor Cogen: Yes; and discounting it with banks.

Mr. Hindin: Either the account was ultimately paid or it wasn't paid; either paid through the trade acceptances—

The Court: Well, the trade acceptances were either paid or not paid.

Mr. Hindin: Here is the only point I want to get clear, your Honor: There was originally an indebtedness for merchandise. It then subsequently appears that there were trade acceptances or negotiable instruments taken. Now, if those negotiable instruments were paid, naturally, the account is paid; but if those negotiable instruments, which

(Testimony of H. E. Graeber.)

were taken on account of those unpaid balances, were dishonored, under no theory can we say that that account was paid. There is a balance due for the original amount. That is the point that I make here; and if I am in error on that statement I would like to have Mr. Graeber tell me.

The Witness: I think you are entirely right. That is the attitude that one would take.

Q. By Mr. Hindin: Now, will you point out any other accounts there?

A. Prior to April 24, 1939?

Q. Yes, please.

The Court: Gentlemen, doesn't the claim speak for itself?

Mr. Victor Cogen: I think it speaks for itself. It [112] states right there.

Mr. Hindin: When and applied on what?

Mr. Victor Cogen: His testimony is that they got \$2,000 and they just applied it. He didn't say for what.

Mr. Hindin: Applied to the open account or for specific trade acceptances. That is the particular point. And these trade acceptances are unpaid—those covering the accounts of April 24th.

Mr. Victor Cogen: Let's ask the witness what he did with the money and which one he applied it to.

Mr. Hindin: That is all right.

Mr. Victor Cogen: Let's clear it up.

(Testimony of H. E. Graeber.)

The Witness: I didn't apply it against any particular item. I applied it against the balance of the account. In other words, a credit went against the sum total of the indebtedness. I wasn't instructed to apply it against any particular item.

The Court: In other words, you gave the total amount credit for it? A. That is right.

Q. By Mr. Victor Cogen: And this indebtedness you have here, \$1,068, was the older indebtedness owed by the Ace Distributing Company?

A. That is correct.

Mr. Victor Cogen: Well, that tells the fact there.

The Court: All right. Proceed, gentlemen. [113]

Mr. Hindin: Are you through?

Mr. Victor Cogen: Yes, I am through.

Mr. Hindin: I want to ask Mr. Graeber one or two more questions.

Q. I show you what purports to be a financial statement, which the court called for this morning and which you referred to in your testimony this morning— A. Yes, sir.

Q. —entitled "Sam Polakof and Sons, 786 Kohler Street, Los Angeles, California. Wholesale Liquor Dealer," signed by Sam Polakof, and ask you if that is the document which was submitted to your concern. A. Yes, sir.

Q. Now, to your knowledge was this Sam Polakof and Sons the same and identical concern which is also known as Ace Distributing Company?

A. I would say so, yes.

(Testimony of H. E. Graeber.)

The Court: You say, "I would say so." Why do you make that statement?

A. Well, because—

Mr. Hindin: Let me ask him this: Let's develop it this way:

Q. Were there two separate accounts—

The Court: May I see the claim?

Mr. Hindin: Perhaps we can clear this point up with a stipulation. May we have a stipulation, counsel, [114] that Marvin Polakof and Sam Polakof and the Ace Distributing Company were and are the same and identical—

Mr. Victor Cogen: No. You couldn't prove that, and that isn't true, according to our information. You couldn't prove it, because it isn't true.

Mr. Hindin: That is a matter of record. There is an adjudication on it.

Mr. Victor Cogen: That is something I know nothing of, counsel, I am sorry I can't stipulate with you.

The Court: Proceed.

Q. By Mr. Hindin: Did you have an account with Ace Distributing Company at 786 Kohler Street? A. Yes, sir.

Q. And was it an incorporated organization or was it unincorporated? A. Unincorporated.

Q. Who was it composed of?

Mr. Victor Cogen: Just a minute. I object to it unless he knows of his own knowledge; not what somebody told him.

(Testimony of H. E. Graeber.)

The Court: Counsel is asking a question that calls for his own knowledge. Can you answer the question of your own knowledge?

The Witness: Repeat it, please.

Mr. Hindin: Read the question.

(Question read by reporter.) [115]

A. I would say Sam and Ivan Polakof. They were the two gentlemen who did—who contacted our winery in regard to the Ace Distributing business most of the time.

The Court: Now, Marvin is the one that is adjudged a bankrupt.

Mr. Hindin: Marvin Polakof, doing business as Ace Distributing Company. That is a matter of the order of adjudication.

Mr. Victor Cogen: And that is why we object, your Honor, and ask that the testimony be stricken. His testimony is that they contacted him. That doesn't prove ownership. They may have agency.

The Court: But here is the proposition: You are proceeding under the theory that Marvin is the bankrupt.

Mr. Hindin: Yes.

The Court: And you have a financial statement of Sam Polakof and Sons, signed by Sam Polakof.

Mr. Hindin: Yes.

The Court: I don't think it is admissible in this proceeding.

Mr. Hindin: Unless we can establish that it is one and identical with Ace Distributing Company.

(Testimony of H. E. Graeber.)

The Court: I don't think you can prove it that way, unless Marvin—

Mr. Hindin: We will prove it.

The Court: All right. Go ahead and prove it. Proceed. [116]

Mr. Hindin: Yes, your Honor.

The Court: All right. Proceed and see what you can prove.

Mr. Hindin: At this time, then, may we offer this for identification?

The Court: It may be marked for identification.

The Clerk: Plaintiff's Exhibit 7 for identification.

Q. By Mr. Hindin: This was the statement that was given to you by Sam Polakof: is that correct? A. Yes, sir.

Q. Did Marvin Polakof ever contact you with reference to the business of the Ace Distributing Company?

A. You mean me personally?

Q. Or your company?

The Court: If he knows.

Mr. Hindin: Yes.

The Court: Of your own knowledge?

A. No; I can't testify to that, because I don't know.

Q. By Mr. Hindin: To your knowledge do the books of your company indicate any transactions with Marvin Polakof, doing business as Ace Distributing Company?

(Testimony of H. E. Graeber.)

Mr. Victor Cogen: Pardon me. I want to object to that. What his books reflect doesn't show any ownership of the business. I might have different things on my books, but that doesn't indicate the party owns it.

The Court: Let's see what it shows. [117]

Mr. Victor Cogen: All right.

A. To the best of my knowledge I don't know whether Mr. Marvin Polakof appeared on any documents.

The Court: As far as you know Marvin Polakof did not owe you any money, did he; as far as you know, of your own knowledge?

A. Only in so far as he is the Ace Distributing Company.

The Court: What?

A. Unless he is the Ace Distributing Company.

Mr. Hindin: That is all. At this time we would like, if the court please, to recall Mr. Marvin Polakof.

The Court: All right. [118]

MARVIN POLAKOF.

recalled as a witness on behalf of plaintiff, testified as follows:

Direct Examination resumed.

Q. By Mr. Hindin: Mr. Polakof, you were in with your father in the Ace Distributing Company, were you not?

(Testimony of Marvin Polakof.)

Mr. Victor Cogen: Just a minute. I object to that on the ground that it calls for the conclusion of the witness.

The Court: If he doesn't know I don't know who does. Objection overruled.

A. I would like to explain that. May I, please?

The Court: Answer the question. Were you interested in that business?

A. Yes, sir.

Q. By Mr. Hindin: When did you first become interested in that business?

A. 1933 or 1934. I think the latter part of 1933.

Q. What interest did you have in that business?

A. I was the owner of the business.

Q. You were the owner of the business?

A. Yes, sir.

Q. Where was this business conducted?

A. 786 Kohler Street.

Q. Pardon.

A. 786 Kohler Street. [119]

Q. Was there any other business conducted by you at that address? A. No, sir.

Q. Who else was in that business with you?

A. My father was the manager of the business.

Q. Your father was the manager of the business?

A. Yes.

Q. Are you familiar with your father's signature? A. I am.

Q. I show you here what purports to be a financial statement, signed "Sam Polakof", Sam Polakof

(Testimony of Marvin Polakof.)

and Sons, address 786 Kohler Street, Los Angeles, California, and ask if that is your father's signature, to your knowledge.

A. I believe it is.

Q. You would identify that as your father's signature?

A. I believe it is.

Q. Was your father in the liquor business, other than with the Ace Distributing Company?

A. No.

Q. To your knowledge was this statement given in connection with the Ace Distributing Company?

A. No.

Q. It wasn't? A. No, sir.

Q. In what business was this given, if you know? [120]

A. I don't know. I never gave authority for the statement.

Q. You gave your father a power of attorney, though, did you not?

A. That is right.

Q. That power of attorney was in force since the 18th of July, 1936, was it not?

A. If that is the date.

Q. I show you what purports to be a certified copy of a power of attorney and ask you if that is the one. A. Yes.

Q. All right. Let me ask you one or two other questions concerning this Ace Distributing Com-

(Testimony of Marvin Polakof.)

pany. Your father was general manager of that company? Yes.

Q. And acting under your authority to conduct the business? A. That is right.

Q. What authority did he have with reference to that business? What did he do?

A. He managed the business; seen that the merchandise went out.

Q. Did he buy merchandise?

A. Yes; he bought merchandise at various times.

Q. Did he arrange for credit for the merchandise?

A. Well, I know he always discussed everything with [121] my bookkeeper first before he arranged for credit.

Q. I am asking you just simply, was he authorized by you to buy merchandise on credit?

A. Oh, yes.

Q. And was he authorized by you to arrange for the necessary credit?

A. Yes; I imagine he was.

Q. Now, was there a business conducted under the name of Sam Polakof and Sons, in the liquor business, at 786 Kohler Street? A. No, sir.

Q. Was the Ace Distributing Company the only business conducted by Sam Polakof for you at that address?

A. Repeat that question.

Mr. Hindin: Repeat the question.

(Question read by reporter.)

(Testimony of Marvin Polakof.)

A. Yes.

Q. Was your father acting for you in that business on March 1, 1940?

A. March 1, 1940?

Q. Yes.

A. No; I believe Dad was ill at that time. I am not sure. I believe Dad was taken ill at that time.

Q. Were you doing business with the Acampo Winery at that time?

A. March 1, 1940? [122]

Q. Yes. A. Yes.

Q. And you were doing business with the Acampo Winery prior to that time, were you not?

A. Yes.

Q. Was your father doing business with the Acampo Winery, other than for the Ace Distributing Company?

Mr. Victor Cogen: Do you mind simplifying that question?

The Court: It has been asked and answered. He said there was only one business conducted there and there was no other business there.

Mr. Hindin: At this time, then, we will offer this in evidence, your Honor.

Mr. Victor Cogen: We object to that on the ground that no foundation has been laid. It is incompetent, irrelevant and immaterial, and no showing that Mr. Marvin Polakof authorized it; secondly, that if introduced it would be in derogation

(Testimony of Marvin Polakof.)

of a deed, and a grantor cannot say anything in derogation of a deed after delivery.

The Court: That would not apply where the charge of fraud is involved, but I can't see that a statement signed by Sam Polakof, under the name of Sam Polakof and Sons, would be of any materiality in this case; that it would tend to prove or disprove anything.

Mr. Hindin: I believe the showing has been made, your Honor, by this witness that he was the manager of the only [123] business. He wasn't engaged in any other business.

The Court: That is all right. You are stressing the fact that there was a power of attorney, but he didn't sign it under the power of attorney; he signed it individually. I am not going to admit it. I will deny it as not binding upon the defendant. In the second place, in looking over the statement of Sam Polakof and Sons, it wouldn't mean anything one way or the other, because the property was in the name of one of the sons. So it wouldn't be a false statement even under those circumstances. It wouldn't even be a misleading statement. He simply gave a statement of the assets of the three people. I think I will admit it for what it is worth. I will consider a motion to strike after the evidence is all in.

The Clerk: Exhibit 7.

(Testimony of Marvin Polakof.)

PLAINTIFF'S EXHIBIT 7

Citizens National Trust and Savings Bank of Los Angeles

Please Complete in Detail

Name—Sam Polakof and Sons

Customer at Office

Address—786 Kohler St., Los Angeles, Calif.

Business—Wholesale Liquor Dealer

For the purpose of procuring and establishing credit from time to time with you, the undersigned furnishes the following as being a full, true and correct statement of its financial condition on the date given below.

In consideration of the granting of such credit, the undersigned agrees that in the event of any material change in financial condition from that as hereinafter set forth, the undersigned will immediately notify you of such change and the extent and character thereof, and agrees that if the undersigned should at any time fail or become insolvent, or commit an act of bankruptcy, or if any deposit account of the undersigned with you, or any other property of the undersigned held by you, be attempted to be obtained or held by writ of execution, garnishment, attachment or otherwise, at the instance of any other person, firm or corporation, or if any of the representations made below prove to be untrue, or if the undersigned fails to notify you of any material change as above agreed, then

(Testimony of Marvin Polakof.)

and in either such case, at your option, all or any of the obligations of the undersigned to or held by you shall become immediately due and payable without demand or notice, and the same may be charged against the balance of any deposit account of the undersigned with you, the undersigned hereby also giving and creating a continuing lien upon such balance of deposit account from time to time existing to secure all obligations of the undersigned to or held by you, either as borrower or guarantor.

Financial Condition as of March 1, 1940

Assets	Amount
Cash in Citizens Natl. Bk.....	\$
Cash in Other Banks (Detail)	
Cash on Hand and in Calif. Bank.....	1,181.26
Accounts Receivable—Good	7,305.21
Notes Receivable—Good (Detail)	
Inventory of mdse on hand.....	3,660.20
Due from relatives.....	
Listed Stocks and Bonds (Itemize on Reverse)	
Unlisted Stocks and Bonds (Itemize on Reverse)	
Acampo	2,500.00
Real Estate and Buildings (Itemize on Reverse)	
U. S. Gov. Appr.....	20,500.00
Mortgage and Trust Deeds (Itemize on Reverse)	
Cash Value Life Insurance.....	750.00
Automobiles, etc. & trucks (3).....	1,400.00
Personal Property	
Other Assets (Detail)	
Machinery and Equipt.....	2,298.00
Total.....	\$39,594.67

(Testimony of Marvin Polakof.)

Liabilities

	Amount
Notes Payable to Citizens Natl. Bk.....	\$
Notes Payable to Other Banks (Detail)	
Accounts Payable	8,970.68
Notes Payable to Others (Detail).....	
Income Tax Payable.....	
Unpaid Taxes & Interest.....	
Mortgages or Liens on Real Estate (Itemize on Reverse)	3,000.00
Loans on Life Insurance.....	
Installment Contracts & Chattel Mortgages.....	
Other Liabilities (Detail).....	
Total Liabilities	
Net Worth	27,623.99
 Total.....	 \$39,594.67

Annual Income

Salary	\$
Securities	
Rentals	2,100.00
Business	4,500.00
Otherwise	
 Total Income	 \$ 6,600.00

Annual Expenditures

[Not filled in]

Life Insurance—\$15,000.00. Payable to—Estate.
 In What Companies?—Occidental & Great North.
 Auto Liability Insurance?—\$20,000.00.
 Have you ever been in Bankruptcy?—No.
 What Contingent Liabilities? (Endorsements,
 Surety, Judgments, Suits)—None.

I hereby certify the above statement, including
 the reverse side, to be true and correct to the best
 of my knowledge and belief.

Date Signed—Mar. 1, 1940.

(Sign here)—SAM POLAKOF

REAL ESTATE—Title stands in name of:

Has Homestead been declared?

Insurance Coverage?

Legal Description, Street Address and Type of Improvements	Value	ENCUMBRANCE	Amount	Owing To	How Payable	Rental Income
one half That portion of the Southwest Quarter of Section 4, Township 1 South, Range 10 West S. B. M. 660' by 1340'	\$12,000					None
U. S. Gov. Appraisal (Aug. 1939) \$24,000.00 Home 2227 Aaron St.....	5,500		3,000	Calif. Bank	24.00 monthly	
1/3 inter Apt. house and store 1237 Riverside Dr.....	3,000			None		

(Testimony of Marvin Polakof.)

Stocks & Bonds—Standing in name of:

Number of Shares or Face Value of Bonds—500

Description—Acampo Winery

Where Listed—

Present Market Value—\$2,500.00

Amount Pledged—None.

Mortgages & Trust Deeds Owned—Standing in name of: [Not filled in]

References:

Q. By Br. Hindin: Now, you were the owner of this Ace Distributing Company as of September 30, 1940, were you not, Mr. Polakof?

A. Yes.

Q. I show you a statement and ask you if that is your signature.

A. Yes; I believe that is my signature.

Q. Do you recall signing this statement as of the condition of business on September 30, 1940?

A. Yes.

Q. To whom was that statement sent? [124]

A. I don't know.

Q. Was that sent to the Alta Winery, do you know? A. I don't know.

Q. I show you another statement as of that date. Is that your signature?

A. Yes; that is my signature.

Q. Do you know whether this statement was rendered to anyone or not?

(Testimony of Marvin Polakof.)

A. That I don't know.

Mr. Hindin: I will offer these for identification only.

The Court: Let me see them.

Mr. Hindin: Yes, your Honor.

The Clerk: 8 and 9 for identification.

The Court: Proceed.

Mr. Hindin: At this time we will offer them in evidence, if the court please.

Mr. Victor Cogen: If the court please, we object to them on the ground that they are incompetent, irrelevant and immaterial, and the statement does not purport to say as to what property this is. It just says "real estate". It is the only statement that is in there, if I am correct in my brief glance at it, so it does not tend to prove or disprove any issue in this case.

The Court: They will be admitted as next in order.

The Clerk: Plaintiff's Exhibits 8 and 9.

(Testimony of Marvin Polakof.)

PLAINTIFFS EXHIBIT 8
ACE DISTRIBUTING CO.
Wholesale Dealers—Fine Wines
784-786 Kohler Street, VAndyke 6577
Los Angeles, California

STATEMENT OF MARVIN POLAKOF
dba ACE DISTRIBUTING CO.,
as of September 30th, 1940

Assets

Cash on hand and in banks.....	\$ 1,550.95
Accounts receivable current.....	7,183.50
Past due over 60 days.....	660.80
Inventory	6,738.96
Real Estate	15,000.00
Plant, machinery, furniture and fixtures.....	4,886.82

	\$36,021.03

Liabilities

Accounts payable	\$ 1,062.87
Acceptances payable	5,589.14
Reserve for bad depts.....	660.80
Encumbrance on Real Estate (plant building).....	10,500.00

Total liabilities	17,812.81
Net Worth	18,208.22

	\$36,021.03

In addition we value good-will and trade marks at \$5,000.00 but for the purpose of the above no value is given.

(Testimony of Marvin Polakof.)

PROFIT AND LOSS ACCOUNT

From Oct. 1st, 1939 to Sept. 30, 1940

Sales	\$51,806.75
Returns, allowances, discounts.....	927.70
Mchdse. cost	39,885.53
Gross profit	12,748.92
Expenses	9,314.77
Net Profit	3,434.15

The above is a full true and correct statement of the affairs of the Ace Distributing Company.

Dated at Los Angeles, California, October 2nd, 1940.

MARVIN POLAKOF

Plaintiff's Exhibit 91

Ace DISTRIBUTING CO.



WHOLESALE DEALERS • FINE WINE
784-786 KOHLER STREET VANDYKE 6571
LOS ANGELES, CALIFORNIA

Rec'd by the
10/24/40
LHM

100 100

Inventory statement as of
Sept 30 1940

Assets

Cash on hand in bank	535 45
accounts receivable good	783.50
raw material (stocks)	823.50
Inventory	573.46
accounts receivable past due	660.80
machinery & fixtures	4886.82
Real Estate & Bldg	5000.00
Goodwill & trademarks	1000.00
Books & cans	1035.70

RE No. 37541-17
Palakof Marvin
BANKRUPT

Trustees

EXHIBIT NO. C

FILED 4-10-41 1941
Mugford & Dickson
CMA

2,348.80

Liabilities

accounts payable	1062.87
Trade acceptance	51.84
Encumbrance on Real Estate	0.00

1000.00 - 50.00 - 1000.00 -
minimum interest - 10.00

Conditions not to 25-30

HEART OF CALIFORNIA

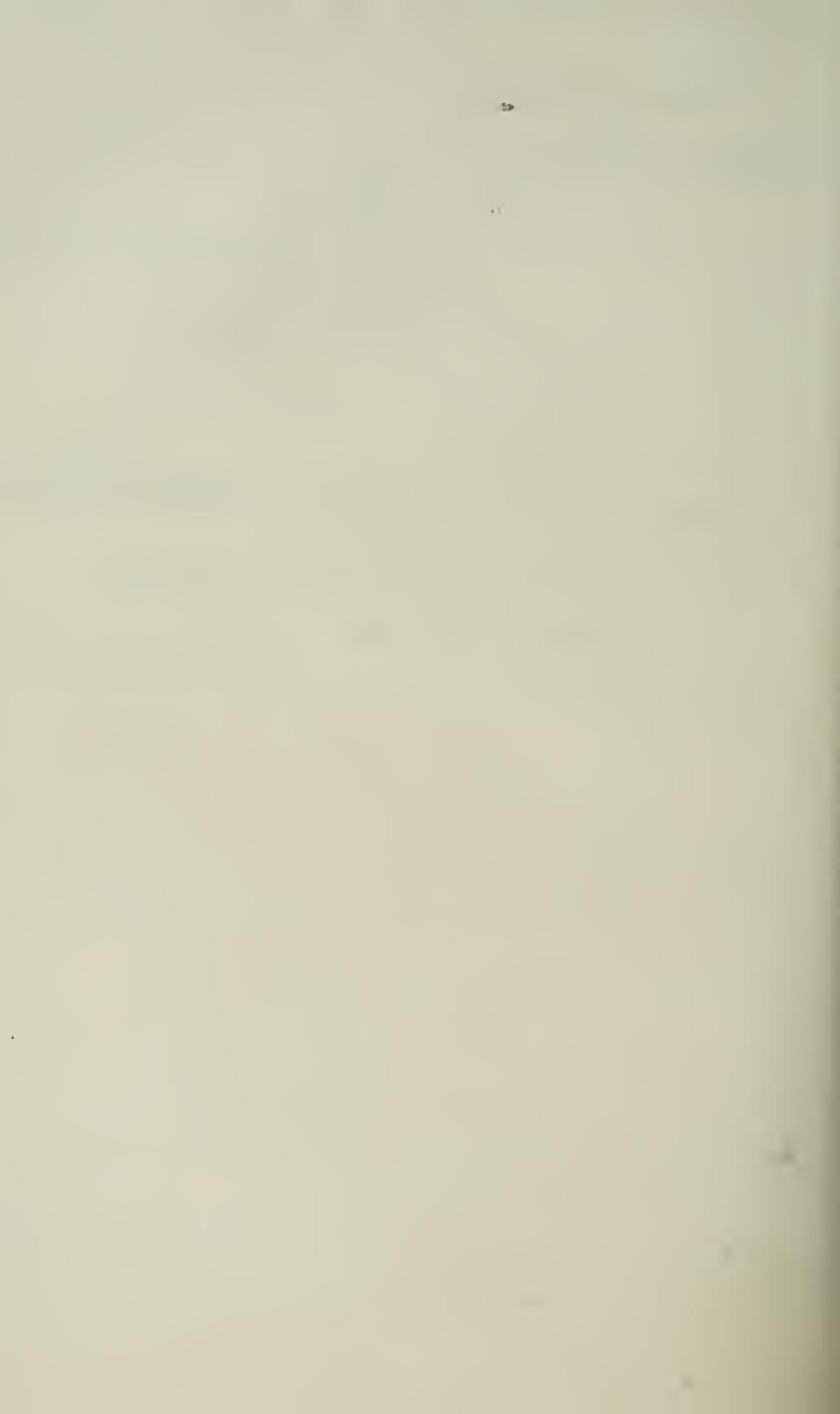
OUR EXCLUSIVE BRANDS
SAINT BRUNO EL ENCANTO

Marvin Palakof
Oct 24, 1940

Mount 125

HEART OF NAPA

NISIM KOSHER



(Testimony of Marvin Polakof.)

Q. By Mr. Hindin: Mr. Polakof, you were doing business [125] with the Acampo Winery since before 1937; is that correct?

A. I believe that is correct.

Q. Did you ever discuss with any officers of the Acampo Winery or make any statement to them to the effect that you were the owner of that business?

A. It was understood. They knew I was the owner of the business.

Q. They knew that?

A. Yes. They knew that they were dealing with me.

Q. They knew that they were dealing with you?

A. That is right, as the owner of the business.

Q. Did you render any statements to them concerning your financial condition, as the owner of the Ace Distributing Company?

A. I was never asked for any statement.

Q. All right. Getting back to this property that you acquired: You testified this morning that the property was taken in your name, but for somebody else; is that true?

A. That is right.

Q. For whom was it taken?

A. It was taken for my brother.

Q. For your brother?

A. That is right.

Q. What is his name?

A. Ivan Polakof.

Q. Ivan Polakof? [126]

A. That is right.

Q. Who bought that property originally?

(Testimony of Marvin Polakof.)

A. Originally?

Q. Yes.

A. It was bought by my father and Mr. Fratkin, in my name.

Q. In your name? A. That is right.

Q. Who paid for that property?

A. My brother paid for it.

Q. What business was your brother in at that time? A. In various businesses.

Q. Well, what were they?

A. Oh, he had property on Riverside Drive, rental properties. He had property in Maywood. He had various properties; various businesses.

Q. Were you present when Ivan paid for that property? A. No, sir.

Q. How do you know that Ivan paid for that property?

A. I know he paid for it, because my father didn't have that kind of money to buy the property with. I know for a fact he paid for it. I know what property he sold in order to derive the money in order to pay for it.

Q. But you weren't there when the money was paid over, were you?

A. No; I can't say that I was. [127]

Q. Were you present when Mr. Fratkin gave you a deed covering his interest in that property?

A. Yes; I was. That took place in Mr. Brody's office.

Q. And at that time both you and Mr. Fratkin were there; is that right?

(Testimony of Marvin Polakof.)

A. That is right.

Q. At that time you received a deed, which is No. 2 in order here, between Fratkin and yourself, conveying all of the interest to yourself; is that right? A. That is right.

Q. In other words, the purported effect of this, as far as you were concerned, was to put the entire title in yourself; is that correct?

A. No. The important thing was to make sure that Mr. Fratkin got the money.

Q. Yes.

A. And that took place in Mr. Brody's office.

Q. Who paid Mr. Fratkin his money?

A. Mr. Brody.

Q. Mr. Brody paid for it? A. Yes.

Q. Did Mr. Brody pay it for himself?

A. For Ivan Polakof.

Q. For Ivan Polakof? A. That is right.

Q. You were there at that time? [128]

A. That is right.

Q. Now, during this period of time you gave a mortgage on that property, did you not, of a thousand dollars?

A. To Mr. Fratkin.

Q. Yes. Did Ivan give that mortgage or did you give it?

A. I believe I gave it and Ivan paid for it.

Q. That was when Mr. Brody gave this—

A. That is right. I believe it was \$300 in cash, and on the balance they came to some terms between themselves.

(Testimony of Marvin Polakof.)

Q. Was Ivan in business at that time?

A. At that time?

Q. Yes.

A. Yes; he was in business.

Q. With your father?

A. No; by himself.

Q. Was your father in business at that time?

A. He was managing the Ace Distributing Company.

Q. And that was for you?

A. That is right.

Q. How long did the title in this company remain in your name?

The Court: The record speaks for itself, counsel.

Mr. Hindin: All right.

Q. During this time you were buying merchandise on credit, were you not? [129]

A. At what time are you referring to?

Q. Between the date that you got the property and the date that you ultimately transferred it?

The Court: The records show that, counsel. He was dealing with this wine company all the time.

Mr. Hindin: Yes.

The Court: He was buying merchandise all that period.

Mr. Hindin: Yes.

Q. Is that right? A. That is right.

Q. Did you tell anybody at that time that you were not the owner of this property?

A. I had no reason to tell them, because I never felt it was mine.

(Testimony of Marvin Polakof.)

Q. Notwithstanding that the record appeared in your name?

A. That is true.

The Court: Did you ever tell anybody that it was yours?

A. I never told anyone it was mine, because I knew it wasn't mine. I knew it was my brother's.

Q. By Mr. Hindin: Notwithstanding that you were in business and got credit for your business?

A. Yes; but no credit was ever extended on the thought of this property being mine, at all.

Q. When did you go back east?

A. 1937, the first time, I believe. [130]

Q. The first time was in 1937? A. Yes.

Q. And during all this time your business was being operated by your father? A. Yes.

Q. While you were in the east, that was the time you executed that deed to your brother; is that correct?

A. That is true.

Q. Will you tell us about this \$10 that your received from your brother?

A. I told that this morning, Mr. Hindin. Do you remember?

Q. Yes. Was that sent to you by cashier's check, do you know, or was it a personal check.

A. I believe it was a personal check.

Q. On what bank was that drawn?

A. I can't recall.

Q. Do you remember who drew it?

A. I believe my brother drew it.

(Testimony of Marvin Polakof.)

Q. Ivan? A. Yes.

Q. To whose order was it made? A. To me.

Q. Did you cash that check?

A. I am quite sure I did.

Q. Whereabouts did you cash it, do you know?

[131]

A. I believe in Omaha; yes, in Omaha.

Q. Let me call your attention, Mr. Polakof, to questions and answers given at the same hearing that we referred to this morning. Let me ask you if you recall this question being asked you:

“Q—To whom did you dispose of it?”—referring to the Baldwin Park property.

“A—To my brother Ivan.

“Q—What did he pay you for it?

“A—Why, there was no actual payment at all. I don’t know how to explain the legal terms of it, but for and in consideration of, I think it was, \$10.”

Q. Do you recall giving that testimony?

A. Yes. I was trying to explain that testimony—what the deed said—and nothing in regard to the \$10. I explained to you that I was getting married and he sent me \$10 and said, “Use it to your advantage,” or “Buy your wife a small gift.” I can’t tell you what the exact language was.

Q. But you received that with the request to send him the deed; is that correct.

A. That is right.

Q. Did Ivan tell you that \$10 he sent you was for a wedding present?

(Testimony of Marvin Polakof.)

The Court: Counsel, I have heard enough about this \$10. I think it is immaterial, as far as this case is concerned, [132] whether it was \$10 or 10 cents or nothing. I have heard enough about it. I am not going to take up all afternoon in examining a witness about \$10.

Q. By Mr. Hindin: When this property was transferred by you did you know the financial condition of your business?

A. I had no reason to feel that anything was wrong with the financial condition of my business.

Q. Did you know what your assets were?

A. No.

Q. Did you know what your liabilities were?

A. No. I left it all in my father's hands, with the good advice of Mr. Kahn, my bookkeeper.

Q. You don't know whether or not you were insolvent or solvent then?

A. I would say this: If there was anything wrong with the business I would have been notified immediately, and I was never notified.

Q. Let me ask you this: Is it my understanding, then, that while your father was conducting this business for you you didn't know whether you had enough money to pay the bills as they came due, or not?

A. I would like to make it clear that the reason my father was managing the business was the fact that I wanted to attend law school.

Q. You went to law school?

A. That is right. [133]

(Testimony of Marvin Polakof.)

Q. How long did you go to law school?

A. I went to law school, oh, I imagine three years.

Q. You went to law school for three years?

A. Yes, sir.

Q. That was during this time?

A. Well, off and on during this time, due to the fact I would start and I would have to be called back on account of the business, and I would have to make another start again.

Q. How many times were you called back on account of the business?

A. When father wanted to take a vacation, that was one of the times. Father became ill; that was another time. Then there was trouble with some help there and I had to come down and help out. In other words, at various times I couldn't apply myself to study, because I had to help out in the place.

Q. Did you, at any time that you returned, go over the financial condition of your business with anyone?

A. With Mr. Kahn?

Q. Was he your accountant at that time?

A. He was.

Q. How old were you at that time, Mr. Polakof?

A. At what time?

Q. 1936?

A. 1936. I am 28 now. In 1936— [134]

Mr. Hindin: I think the court will take judicial notice of the computation.

(Testimony of Marvin Polakof.)

The Witness: Wait just a minute. 25—24.

Mr. Hindin: I see. I think that is all.

The Court: We will take a five-minute recess at this time.

(Recess.)

The Court: Proceed.

Cross Examination

Q. By Mr. Victor Cogen: The business was located at 784-86 Kohler Street, in the City of Los Angeles? A. That is right.

Q. In September, 1940, you had an agreement with reference to that real estate, to purchase it?

A. I did.

Q. Was there about \$10,500 owing at that time?

A. That was the approximate figure.

Q. Was that considered, the plant building, on the books of the company?

A. That is right.

Q. When you refer in the statements, Exhibits 8 and 9, to an encumbrance on real estate (plant building) \$10,500, that refers to the building located on Kohler Street? A. Yes.

Q. When you refer to it on the assets, real estate \$15,000, was that the building located on Kohler Street? [135] A. Yes.

Q. That is the only building intended by both these statements? A. That is right.

Q. And that is not the property in Baldwin Park? A. That is right.

Mr. Victor Cogen: That is all.

(Testimony of Marvin Polakof.)

Redirect Examination

Q. By Mr. Hindin: With reference to this property, real estate \$15,000, what was that property?

A. That was the building at 784-86 Kohler Street.

Q. As a matter of fact, Mr. Polakof, you had an option to purchase that property, did you not?

A. That is right.

Q. You did not own that property, did you?

A. We were paying on it.

Q. I show you what purports to be a document entitled "Agreement", dated the 15th day of August, 1940, with your signature; is that right?

A. That is my signature.

Q. Is that the agreement which covers this particular item of \$15,000?

A. I believe this is the agreement; yes.

Q. That is the agreement which refers to that, and this is the only agreement that you have with reference to the purchase of that property; isn't that right? [136]

A. I believe there was another agreement. I am not sure.

Q. Where is the other agreement?

A. Mr. Bokofsky or the owner of the building would know.

Q. What did the other agreement contain?

The Court: What does that show as the purchase price?

(Testimony of Marvin Polakof.)

Q. By Mr. Hindin: What does it show the purchase price to be, \$10,500; is that correct?

A. That is correct. The statement here, "plant building \$10,500."

Q. That is a liability? A. Yes.

Mr. Hindin: It will be offered in evidence.

The Court: It may be admitted.

The Clerk: Plaintiff's Exhibit 10.

PLAINTIFF'S EXHIBIT 10

AGREEMENT

This Agreement, Made and entered into this 15th day of August, 1940, by and between Harold A. Davis, Eugene H. Rosenthal and I. H. Norton, hereinafter designated as "First Party", and Marvin Polakof, hereinafter designated as "Second Party",

Witnesseth:

That Whereas, first party is the owner of that certain real property situate in the City of Los Angeles, County of Los Angeles, State of California, described as Lots 150 and 151, Kohler Tract, as per Book 54, Page 51 Miscellaneous Records of said County, commonly known as 784-786 Kohler Street; and

Whereas, second party desires to purchase the said real property from first party; and

Whereas, second party now occupies the said real property as a tenant of first party.

Now, Therefore, it is agreed by and between the parties hereto as follows:

(Testimony of Marvin Polakof.)

(I) That second party shall continue to occupy the premises as a tenant of first party, up to and including December 31, 1940, and during said period second party will pay to first party, as rental, the sum of Sixty-five Dollars (\$65.00) for the month of August, 1940, payable in advance, for that portion of the premises designated as 786 Kohler Street, and no rental for the month of August, 1940, for that portion of the premises designated as 784 Kohler Street. Commencing September 1, 1940, second party will pay One hundred thirty Dollars (\$130.00) per month, as rental for the entire premises for the months of September, October and November, 1940, and One Dollar (\$1.00) for the month of December, 1940. Said payments shall be made on the first day of each and every month of the said four (4) month term.

(II) In the event that second party complies with each and every provision of the foregoing paragraph numbered (I), and is in possession of said premises on January 1, 1941, then and in that event, and in that event only, first party agrees to sell and convey to second party, and second party agrees to purchase the real property hereinabove described, upon the following terms and conditions:

(a) The purchase price shall be Ten thousand five hundred Dollars (\$10,500.00), lawful money of the United States of America, payable in installments as hereinafter set forth, together with interest at the rate of five per

(Testimony of Marvin Polakof.)

cent (5%) per annum, from January 1, 1941, on all balances of principal unpaid.

(b) In addition to the purchase price, commencing January 1, 1941, second party agrees to pay any and all taxes and assessments that may become a lien against the said real property, or any part thereof. The taxes for the year 1940-41 shall be pro rated as of January 1, 1941. First party will make the payments referred to in this paragraph, as the same become due, and will be reimbursed by second party out of the payments that will be made by second party, as hereinafter set forth.

(c) The improvements upon the said real property are now insured against loss by fire. The second party agrees to pay the cost of the policies of fire insurance upon the improvements on the said property, during the period that this contract is in force. The premiums on the said policies now in force shall be pro rated as of January 1, 1941. The said policy or policies of insurance, commencing January 1, 1941, shall contain a recital that the policy or policies are for the benefit of both parties to this agreement, as their interests may appear. First party will make the payments referred to in this paragraph, as the same become due, and will be reimbursed by second party out of the payments that will be made by second party, as hereinafter set forth.

(d) The purchase price, taxes, assessments

(Testimony of Marvin Polakof.)

and insurance, hereinabove referred to, shall be paid by second party to first party, as follows:

Five hundred Dollars (\$500.00) on the 1st day of January, 1941, and

Five hundred Dollars (\$500.00) every three (3) months thereafter, until the total purchase price, interest, taxes and insurance shall be paid by second party to first party. The said Five hundred Dollar (\$500.00) installments shall be made on January 1, April 1, July 1 and October 1 of each year. The said payments shall be applied as follows:

First, on interest due to first party.

Second, on taxes and assessments.

Third, on insurance premiums.

Fourth, balance to be applied upon principal of purchase price.

(e) Second party agrees to keep the premises in good order and repair, and first party shall not be called upon to make any repairs of any kind, nature or character, in and to the said premises.

(f) Second party agrees not to make any alterations or changes in the construction of said premises without the written consent of first party first had and obtained.

(g) In the event that first party consents to any change or alteration, or reconstruction of the said premises, the said change, or alteration shall be made at the sole expense of second

(Testimony of Marvin Polakof.)

party, and first party shall not be responsible therefor in any shape, manner or form. In the event that first party does consent to a change or alteration in the said property, or premises, second party agrees to notify first party immediately prior to the commencement of the said change or alteration, and immediately prior to the delivery of any materials to the said premises. The said notice is to enable first party to properly record and post an "Owner's Notice of Non-Responsibility" pursuant to Section 1192, Code of Civil Procedure of the State of California.

(h) First Party is also the owner of Lot 149, Kohler Tract, which joins the property which is the subject matter of this contract. At the present time there is a building erected on the said Lot 149, Kohler Tract, as well as Lot 150 of said tract. There is a wall on the boundary line between the said Lots 149 and 150, which is the wall used by both buildings, to-wit, the building on Lot 149 and the building on Lot 150. Upon the completion of the payments by second party to first party, as hereinabove set forth, second party will receive the title to Lots 150 and 151, and it therefore becomes necessary that an agreement be entered into respecting the wall between Lots 149 and 150. The parties hereto agree that the said wall on the boundary line between Lots 149 and 150,

(Testimony of Marvin Polakof.)

Kohler Tract, shall become and remain a party wall, and the common property of the said owners, their respective heirs and assigns, so that either of them shall be at liberty to use said wall by inserting timbers or other materials up to, but not beyond a vertical line drawn through the center and along the entire length of said wall, or otherwise to use the said wall in any manner that may not interfere with the equal use of the other half of the wall by the other owner. Either party may add to said wall in height, depth or thickness; in case of damage may repair; or in case of destruction may rebuild said wall, or any addition thereto. Any such reconstruction shall be of good materials and workmanship, and shall conform with the building laws of the City of Los Angeles and State of California. No addition to the thickness or height shall be made by either party on the real property of the other party without the written consent of such party.

(i) Time is of the essence of this agreement and in the event of failure by second party to comply with each and every of the terms, covenants and conditions contained herein, the first party shall be released from all obligations in law or equity to convey said property, and second party shall forfeit all rights thereto, and to all moneys theretofore paid, and second party's interest in and to said moneys or said

(Testimony of Marvin Polakof.)

real property shall thereupon immediately cease as fully as if said moneys had never been paid, or this agreement entered into, and in the event that second party should then be in possession of said real property, first party shall thereupon be entitled to immediate possession thereof and shall have as full power to dispose of said real property as if this agreement had never been made, executed or delivered.

(j) In the event that second party complies with each and every one of the terms, covenants and conditions of this agreement, and pays the full purchase price, and the interest, taxes, assessments and insurance, at the time and in the manner above set forth, first party agrees to execute and deliver to second party a good and sufficient deed, conveying said property free of encumbrances, except as follows:

(1) Conditions, restrictions, reservations and/or rights of way of record.

(2) Any encumbrance or lien created or suffered by second party.

Upon the full compliance by second party, with the terms and conditions of this agreement, first party will furnish to second party a guarantee of title or policy of title insurance, prepared by a reputable title insurance company, showing the record title of the said real property to be vested in second party.

(Testimony of Marvin Polakof.)

(k) Commencing January 1, 1941, upon the payment of the sum of Five hundred Dollars (\$500.00), as hereinabove provided, second party shall be entitled to the possession of the real property hereinabove described, and said second party shall retain possession of the said real property upon compliance with and performance of each and every of the terms and covenants and conditions of the within agreement.

(1) In addition to the quarterly payments of Five hundred Dollars (\$500.00) to be made by second party, as hereinabove provided, said second party may, at second party's option, on any payment date, pay such additional sums upon the principal of the purchase price, as second party may desire.

(III) In the event that second party records this agreement in the office of the County Recorder of Los Angeles County, or permits anyone else to record the same on behalf of second party, before second party has paid One thousand Dollars (\$1,000.00) on the principal of the purchase price, this agreement, at the option of first party, shall become null and void and of no force or effect, and all of the moneys theretofore paid by second party to first party, pursuant to the terms of the said agreement, shall be forfeited by second party as liquidated damages.

(Testimony of Marvin Polakof.)

(IV) This agreement, and any and all of the rights and privileges conferred by the said agreement, shall be and are hereby declared subordinate to any trust deeds and/or mortgages that may now be of record against the real property hereinabove described, or that may hereafter be executed and recorded.

(V) Second party agrees to pay to first party, reasonable attorney's fees in the event that it becomes necessary for first party to engage counsel for the purpose of enforcing any of the terms, covenants or conditions of this agreement.

(VI) First party agrees to pay to second party, reasonable attorney's fees in the event that it becomes necessary for second party to engage counsel for the purpose of enforcing any of the terms, covenants or conditions of this agreement.

(VII) This agreement shall be binding upon and inure to the benefit of the heirs, administrators and assigns of the parties hereto.

In Witness Whereof, the parties hereto have hereunto set their names, the day and year in this agreement first above written.

HAROLD A. DAVIS

EUGENE H. ROSENTHAL

I. H. NORTON

First Party

MARVIN POLAKOF

Second Party

(Testimony of Marvin Polakof.)

GUARANTEE

In consideration of the foregoing agreement by Harold A. Davis, Eugene H. Rosenthal, and I. H. Norton, as first party, I, the undersigned, Percy M. Barker, do hereby unconditionally guarantee the full and complete performance of the said agreement by Marvin Polakof, named therein as second party, and I do further unconditionally guarantee that the said Marvin Polakof shall make each and every of the payments that shall become due to first party, pursuant to the terms of the said agreement, including attorney's fees, as recited therein. I do further consent that the time for the making of any and all payments may be extended from time to time, before, at, or after maturity, without notice to me, and I do hereby waive demand and notice of non-payment. It is my intention to unconditionally guarantee the performance of the foregoing agreement on the part of Marvin Polakof.

Dated: August 15th, 1940.

PERCY M. BARKER

State of California,
County of Los Angeles—ss.

On This day of August, 1940, before me, Jeanette Glogau, a Notary Public in and for said County and State, personally appeared Harold A. Davis, Eugene H. Rosenthal and I. H. Norton, known to me to be the persons whose names are

(Testimony of Marvin Polakof.)
subscribed to the within Instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public in and for said
County and State.

State of California,
County of Los Angeles—ss.

On This day of August, 1940, before me, a Notary Public in and for said County and State, personally appeared Marvin Polakof and Percy M. Barker, known to me to be the persons whose names are subscribed to the within Instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public in and for said
County and State.

The Court: Any further questions?

Mr. Hindin: No; I have nothing further.

Mr. Victor Cogen: That is all.

The Court: Call your next witness. [137]

MAURICE KAHN,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: Maurice Kahn.

Direct Examination

Q. By Mr. Hindin: What is your business or occupation? A. I am a public accountant.

Q. Are you a certified public accountant?

A. No, I am not.

Q. Did you have charge of the books of the Ace Distributing Company? A. Yes, I did.

Q. From what date to what date?

A. Well, up until about March or April, 1939 I was working there as a full time bookkeeper, and then subsequently I was there on a part time basis.

Q. When did you first go to work there? You said "up to" —

A. I believe about 1936. I am not sure of the exact date.

Q. During that period of time what were your duties with reference to the books? Did you make the original entries?

A. I made all the entries.

Q. I show you what purports to be two sets of books [138] and ask you if those are the books of the Ace Distributing Company?

A. Yes, they are.

Q. Are those the books that you kept for them during the period that you were engaged?

(Testimony of Maurice Kahn.)

A. They are.

Q. Does there appear on those books a list of accounts payable or the creditors of the business, as of any given date? A. Yes; there is.

Q. Calling your attention to the creditors of that business, as of April 24, 1939, what were the names of those creditors?

A. I will have to give you the figure as of April 30th. In other words, the books here—the entries were made in toto at the end of the month.

Q. I think we can save considerable time by asking this question: On that date, April 24th, or the next posting period, April 30th, was the May Company listed as a creditor? A. It was not.

Q. Was Mr. Elmer J. Walther listed as a creditor? A. He was not.

Q. Was the Royal Credit Jewelers listed as a creditor? A. They were not.

Q. Was the Acampo Winery listed as a creditor? [139] A. Yes; it was.

Q. What was the amount of their claim as of that date?

A. According to the records it was \$10,487.43.

Q. That was subject to any allowances for discounts— A. That is right.

Q. —or any refunds? A. That is right.

Q. Do the books of the company reveal any inventory statement as of that time?

A. No; they do not.

(Testimony of Maurice Kahn.)

Q. When was the nearest inventory period taken after that time?

A. Well, according to the ledger the only record I have of an inventory period was as of December 31st of the previous year. In other words, it was set up in the books as of January 1, 1939.

Q. Set up as of January 1, 1939?

A. That is right.

Q. What was the inventory as of that time?

A. \$6,553.99.

Q. There was an inventory taken at the end of December, was there not? A. That is right.

Q. What was the inventory at that time?

A. I will have to check this. As of January 1, 1940, it was \$2,501.42. [140]

Q. In other words, there was a decrease in inventory by approximately \$3,500 during that period?

A. \$4,000.

Q. Approximately \$4,000 between the 1st of January, 1939 and the 31st of December, 1939?

A. That is right.

The Court: When you refer to inventory that means total assets of the company?

A. No; that means just merchandise for resale.

Q. By Mr. Hindin: During this period was there a profit and loss statement made by you?

A. You mean at the end of the year?

Q. Was there any profit and loss statement made as of December 31, 1938? A. Yes; there was.

Q. What did that show as the profit or loss?

(Testimony of Maurice Kahn.)

Mr. Victor Cogen: If the court please, isn't that beside the point? As I understand, there are only two dates that are actually involved; one is the date of the execution of the instrument in 1937—

The Court: But if they can show he was insolvent on December 1, 1938 and insolvent again on December 1, 1939 they have him pretty near hooked on the insolvency question, haven't they?

Mr. Victor Cogen: Well, I can't see—

The Court: It seems to me if there was no actual [141] inventory taken on that particular date, then they couldn't prove it.

Mr. Victor Cogen: I suppose that is the best evidence anyone could produce, but I still feel it isn't the proper evidence.

The Court: Objection Overruled.

Mr. Victor Cogen: May I interpose a statement? The proof of insolvency is mainly ability to pay or not to pay, and I refer to two code sections of the California State Law, which is the applicable law; I refer to Sections 3077 and 3450.

The Court: Well, this is evidence that tends to establish or not establish certain facts, and it is admissible, in my opinion.

Mr. Victor Cogen: I didn't hear the last sentence.

The Court: Proceed.

The Witness: Will you repeat the last question?

Mr. Hindin: Will you read the question.

(Question read by reporter.)

(Testimony of Maurice Kahn.)

A. That was December 31, 1938?

Q. Yes.

A. It showed a profit of, as of the end of the year 1938, \$1,321.69.

Q. Was there, between that time and the next account period—what was the result of that period's operations? In other words, the profit and loss statement as of December [142] 31, 1939?

A. It showed a loss of \$92.19.

Q. I show you a financial statement and ask you if you have ever seen that before?

A. Yes, I have.

Q. What is this financial statement?

A. It is headed, "Financial Statement of Ace Distributing Company as of December 31, 1939." It shows a deficit of \$2,196.69.

Q. Over what operating period is that?

A. Well, that is the condition of business as of that date.

Q. In other words, the business was insolvent by the sum of \$2,196.69 as of December 31, 1939?

(Testimony of Maurice Kahn.)

The Court: Just a moment. That doesn't show any such thing. You asked him for the profit or loss. Introduce the statement, and then I can read it.

Mr. Hindin: All right.

The Court: Who prepared the statement?

A. I did.

Q. By Mr. Hindin: I show you what purports to be a financial statement of Ace Distributing Company as of December 31, 1939, which shows an insolvent condition to the extent of \$2,196.69—

Mr. Hindin: I will offer this as plaintiff's exhibit next in order. [143]

PLAINTIFF'S EXHIBIT 11

FINANCIAL STATEMENT OF ACE DISTRIBUTING CO. as of December 31, 1939

	Assets	Liabilities
Cash on hand.....	\$ 234.75	
Cash in Bank.....	21.56	
Trucks, Factory Fixtures & Equipment and Office Fixtures & Equipment (Depreciated value)	2,270.46	
Trade accounts receivable (Good).....	3,255.76	
Trade accounts receivable (Doubtful).....	76.05	
Wine Inventory	2,501.42	
Accounts Payable		10,556.69
Deficit	2,196.69	

The Court: Is that made up from the records of the company?

(Testimony of Maurice Kahn.)

A. I was just noticing something there that has come to my attention now, about what I considered certain assets, that aren't in there. In other words, it will show—as the questions go on I suppose it will come out.

Mr. Victor Cogen: Do you mean there are other assets, other than what is mentioned in there?

A. It is a question of what is considered assets, and I wouldn't want to venture an opinion on that.

Mr. Hindin: We will go into that.

Q. Was there a balance sheet, such as this one, prepared by you in December, 1938?

A. I have one here in the journal.

Q. As of December, 1938?

A. Well, it is the same thing. It is a balance sheet setting up those accounts for January 1, 1939.

Q. What was the condition of that business at that time?

A. Well, I didn't set it up as a net worth there. In other words, I can just give you a brief idea here, and I think it will save time. We show accounts payable here \$12,866.06. I am going to give this to you in round figures; if there are any errors we can correct it. Cash in bank and cash on hand, approximately \$770. Fixtures, equipment and trucks amount to, I would say, approximately \$3,000. Trade accounts receivable \$3,827.17. January 1st inventory [144] \$6,553.99. Then there is a miscellaneous item here that would have to be broken down.

Q. What is that miscellaneous item?

(Testimony of Maurice Kahn.)

A. It consists of Marvin Polakof's drawings and what I call here "miscellaneous accounts receivable." In other words, they were not trade accounts receivable.

The Court: What does that show as to solvency or insolvency at that time?

A. Well, let's see——

The Court: Have you ever added them up?

A. I think it shows it was solvent.

Q. By Mr. Hindin: By how much, approximately?

A. I would say about \$2,000.

Q. In other words, between the period of time of December 31, 1938 and December 31, 1939 the business showed a changed condition of some approximately \$2,000 net worth to a \$2,000 deficit; in other words, a loss of \$4,000?

A. Taking what I have just said for granted, yes. That is subject to recheck of the exact figures.

Q. Have you made any attempt to ascertain the solvency or insolvency of this business as of April 24, 1939?

A. I was asked to do so and I made a statement as of April 30, 1939.

Q. What was the net worth or deficit at that time?

A. Well, I must explain this. In regard to the inventory, I had no record or there were no records available to show if an inventory had been taken as of April 30th, and I had to estimate the

(Testimony of Maurice Kahn.)

approximate inventory at that time. And from that estimate—

Q. Let me ask you one more question. What method did you use in computing the estimated inventory as of that time?

A. Well, I took the sales and purchases for the years 1936, 1937, 1938 and 1939, and figured what the profit on sales were, and then working back—in other words, taking the purchases up to that time—or rather, it was working backwards. I took the sales up to that period and deducted the approximate profit, which should have showed the amount of the goods sold. Then I took the beginning inventory, plus the purchases up to that period, and deducted that from it.

Q. What basis of mark-up did you take?

A. To arrive at that figure I took a 21 per cent profit on the sales.

Q. Would the fact that during this period, during the period of one year's time, during which this time was in the center of that period, was the fact that the business showed approximately a \$4,000 loss taken into consideration, also?

A. I don't quite understand your question.

Q. Well, I mean your mark-up of 21 per cent gross profit on sales?

A. That is not the mark-up. That is the profit on [146] sales.

Q. Yes. Would the fact that the business, during

(Testimony of Maurice Kahn.)

this period, was showing a loss, change that position any? A. I don't see why it should.

Mr. Victor Cogen: Just a moment. I object to that question. I think it assumes a fact not in evidence.

Mr. Hindin: All right.

The Court: Well, he has answered it.

Mr. Victor Cogen: All right.

Q. By Mr. Hindin: Basing your estimated inventory on approximately 21 per cent mark-up, what was the condition of that business as of April 24th?

A. This is April 30th. From the figures I gathered it shows a net worth of \$37.08.

Q. In arriving at that net worth you have deducted from the assets the liabilities, have you not?

A. That is right.

Q. As a liability, do the books reveal the existence of May Company as a creditor?

A. No; it does not.

Q. Does it reveal the existence of Mr. Elmer J. Walther as a creditor? A. It does not.

Q. Does it reveal the Royal Credit Jewelers as a creditor? A. It does not. [147]

Q. Now, if a claim by Mr. Walther, in the sum of \$100, were added to the account—

The Court: Well, that is self-evident, counsel. You don't have to ask him, "If you add a hundred dollars would it make him insolvent?" Assume that the court has some sense.

(Testimony of Maurice Kahn.)

Mr. Hindin: That is all, then, your Honor.

Cross Examination

Q. By Joseph Cogen: Mr. Kahn, may I see that statement from which you gave this last figure?

The Court: As I understand, Mr. Witness, on January 1st they were solvent and, according to your figures, had a net worth of approximately \$2,000?

A. I would say approximately \$2,000.

The Court: And you estimated that on April 30th, without taking an inventory, they had lost virtually that \$2,000?

A. From these figures it would look like that.

The Court: How do you account for that?

A. Well, in checking over these——

The Court: Were there withdrawals or a drop-off in business, or what?

A. Well, the whole thing is here. There must have been withdrawals of about \$1300 during that period that are in this miscellaneous accounts receivable. In other words, here the total shows, "M. Polakof and miscellaneous receivables \$2,181.01." In going over the records as of [148] April 30th, Marvin Polakof himself is charged with \$26.15. Then there is set up, as assets here, Sam Polakof \$1300, and Ivan \$300. Then there are some sales and things like that that were set up as assets. In other words, advances to salesmen.

(Testimony of Maurice Kahn.)

The Court: All right. Proceed. You said you had some explanation you wanted to make of this statement.

A. In regard to this inventory. It is almost self-explanatory. In other words, taking this 20 per cent profit—

The Court: I don't mean on April 30th.

A. No. This is for 1938 and 1939.

The Court: Where is that last exhibit? You said you had some explanation of Exhibit No. 11.

A. Well, in other words, that does not include what is set up here as assets, Sam's special account and Ivan Polakof. In other words, there was a question at that time, when I made that up, whether or not it consisted of that. I don't know who I made that up for or who it was used for. It may have been for my own information or Sam Polakof or Marvin Polakof. I don't even know what it was used for.

The Court: All right.

Q. By Mr. Joseph Cogen: Mr. Kahn, in keeping your books you considered this was a wine distributing business, didn't you? [149]

A. That is right.

Q. And in making up your cost of purchases you included the price of labels, bottling supplies and what else?

A. Well, here is what is included in the cost of merchandise: The wine itself, bottles and bottle supplies, labels, and hauling.

(Testimony of Maurice Kahn.)

Q. In making your estimated inventory as of April 30, 1939, did you have any bottles, bottle supplies or labels on hand?

A. I didn't calculate it from that basis at all.

Q. Do you have any way of estimating the possible amount that you might have on hand?

A. Well, I would have to calculate it in a different way altogether. In other words, what I have done here—

Q. Could it have been as much as \$500?

A. Well, that is hard to say. In other words, I really can't voice an opinion here, unless I know what I am talking about, and I can't say anything unless I have figures to work with.

Q. On this statement you refer to these various items as expenses, inasmuch as they are not included in your statement of assets and liabilities?

A. They should be included up here in this estimated inventory.

Q. In other words, your estimated inventory would be increased that? [150]

A. Well, I don't quite get your question.

Q. Wouldn't they be separate items? Wouldn't that be increased here?

A. This is the idea: If I calculate this from a different basis altogether; in other words, if we take the inventory and the purchases and bottle supplies and hauling, and if we know what our market is and know the sales, we might arrive at a different inventory figure.

(Testimony of Maurice Kahn.)

The Court: Isn't it a fact that that figure might vary \$500 one way or the other?

A. Oh, yes; very easily.

Q. By Mr. Joseph Cogen: On the basis of this inventory this statement was made. During the early spring didn't the company you worked for sell a considerable amount of religious wine during that period?

A. Well, it all depends. Around April 30th, they would at that time.

Q. And wasn't there quite a mark-up in religious wine?

Mr. Hindin: During what period?

Mr. Joseph Cogen: The spring of 1939.

A. Yes; there would be.

Q. Would that mark-up affect your total percentage?

The Court: Did that wine cost more or did you make a better profit?

A. The wine cost the same price, but instead of a 25 per cent mark-up it was a hundred per cent mark-up. [151]

The Court: Religion costs money sometimes.

Q. By Mr. Joseph Cogen: Would that increase your inventory in any way, if it had an adverse influence on merely four months, instead of twelve months?

The Court: Counsel, he said it might vary \$500.

Q. By Mr. Joseph Cogen: Did this business have as many as a hundred customers?

(Testimony of Maurice Kahn.)

A. More than that.

Q. How much business were they doing per month?

A. Well, I can give that to you in a hurry. What period do you want?

The Court: How much were you doing in 1939?

A. 1939? Well, the whole year showed—wait a second. Sales for 1939 were \$41,000.

Q. By Mr. Joseph Cogen: Were the sales made in wines bottled under distinctive labels?

A. Well, they sold both bulk and bottled goods.

Q. What labels were used to sell that wine?

A. Well, we had three different labels. One was a very special package; the other one was medium priced; the other was high priced.

The Court: All the same wine? A. Yes.

Mr. Joseph Cogen: Yes, your Honor. We will stipulate to that.

Q. Do you know of your own knowledge whether or not [152] people would ask for wine under distinctively different labels used by the Ace Distributing Company? A. Yes.

Q. Do you know how long those labels were used?

The Court: What is the materiality of that?

Mr. Joseph Cogen: I am trying to build up a value for good will, your Honor.

The Court: Well, you are just wasting a lot of time of this court, both of you. Both sides have killed half the time here today. Go ahead.

(Testimony of Maurice Kahn.)

Mr. Joseph Cogen: Just one question more.

Q. You have already answered, I believe, that the business did not show a loss for a year, or only showed a loss of \$92, whereas, the difference in assets and liabilities was decreased by—

A. It was an approximation. In other words, the loss for that year was \$92, but the decrease in net worth was approximately four thousand.

Q. And that is explained by drawings, and so forth, from the business? A. That is right.

Q. Did your books ever show that Marvin Polakof ever owned the Baldwin Park property?

A. No; they did not.

Q. Do you know of your own knowledge whether or not a statement was ever made by Marvin Polakof that he owned [153] the property, and secured credit on that?

A. Of my own knowledge I don't know.

Q. On April 24, 1939, and previous thereto do you know whether or not the Ace Distributing Company was being threatened with suits by the creditors?

A. To my knowledge they never were.

Q. Can you tell us in what manner they were paying their bills?

A. Well, they had a very good reputation. They may have been a little slow, but they always paid them.

Q. They always paid their bills? A. Yes.

Mr. Joseph Cogen: That is all.

(Testimony of Maurice Kahn.)

Redirect Examination

Q. By Mr. Hindin: Between April 30, 1939, and the date of the bankruptcy did the net worth of the business at any time increase from this insolvent condition?

A. Well, just without basing my answer on any figures—in other words, just from what I know of the general condition of the business, I would say no, except for a period when there was a credit supposed to have been issued by the Acampo Winery that would change the whole net worth picture.

Q. Was their liability increased accordingly?

A. What is that?

Q. Was their liability increased accordingly?

[154]

A. You mean from 1939 did the liabilities go up?

Q. Yes.

A. I can give you that answer in a second. Well, it looks as if in 1939, April, 1939, we show liabilities, that is, accounts payable, of \$11,348. And I notice here in February, 1940, there was only \$8,970.16, but I don't know what would account for that. I mean I would have to check the records.

Mr. Hindin: That is all.

Recross Examination

Q. By Mr. Joseph Cogen: What was the first time, to your knowledge, that the Ace Distributing Company was threatened with suit by the creditors for not paying?

(Testimony of Maurice Kahn.)

A. I would say about August, 1940, that I know of personally.

Q. Would that be in reference to the transaction with the Acampo Winery?

A. Well, this was during the period that this Mr. Bokofsky was there, and anything could happen then.

Q. I see.

Mr. Joseph Cogen: That is all.

Redirect Examination

Q. By Mr. Hindin: Did you ever discuss the financial condition with Mr. Marvin Polakof?

A. That is hard for me to say. In other words, I don't remember. [155]

Q. Did Mr. Polakof, during this period, ever talk about—

A. During what period are we talking about?

Q. Prior to April 24, 1939? A. No.

Mr. Hindin: That is all. Plaintiff rests.

Mr. Victor Cogen: If your Honor please, I am going to move for a nonsuit. Frankly, your Honor, I think a short review of this testimony discloses that there actually were only four creditors, and two of them were secured claims. There is no showing that the security was insufficient. The third one was an attorney's fee, and as far as I could see there was no statement ever sent. It was just on his books, and he, as he said, just put the charge on the books, and he referred to nothing for any evidence

(Testimony of Maurice Kahn.)

of payment or where he would get paid. The fourth one is the Acampo Winery. The Acampo Winery has stated that they did business with the Ace Distributing Company for a period of years, and they never got a financial statement; not one. And it wasn't until some time in 1940, after Mr. Bokofsky became manager of the business and Mr. Sam Polakof died, that they ever got a statement. That is my recollection. I may be wrong about some of the figures, but the point is this: All the Acampo Winery bills were paid; everyone of them. They had a little dispute about a matter that lasted almost a year or two, but they took trade acceptances, [156] and they were executed in 1940, away subsequent to the recordation of the deed. The suit in this case is an allegation of fraud on the existing creditors. I want your Honor to recall that their witness, Mr. Albright, testified that some time in 1937, after he moved into his new house in June—

The Court: I remember that testimony. However, counsel, I feel this way: I am almost constitutionally opposed to granting nonsuits. I would rather pass on the case after the evidence is in. It is dangerous to all parties, whether there is a *prima facie* case or not. It may be a close point, but I prefer to hear the evidence.

Mr. Victor Cogen: I am perfectly satisfied, your Honor.

The Court: I think, as long as it is this time we will adjourn until tomorrow morning at 10 o'clock. How long will it take to put on your case?

(Testimony of Maurice Kahn.)

Mr. Joseph Cogen: I don't think it will take more than an hour, your Honor. Of course, I can't tell how long the cross examination will be.

The Court: We will take a recess until 10 o'clock tomorrow morning.

(An adjournment was taken until Wednesday, October 15, 1941, at 10 o'clock a. m.) [157]

Los Angeles, California, Wednesday, October 15,
1941, 10 a. m.

The Court: Proceed.

Mr. Joseph Cogen: If the court please, for the purpose of convenience I would like to put on two or three witnesses out of order, that are employes of various banks, and let them go.

The Court: Proceed.

WESLEY TAMBLYN,

called as a witness on behalf of defendants, being first duly sworn, testified as follows:

The Clerk: Will you state your name, please?

The Witness: Wesley Tamblyn.

Direct Examination

Q. By Mr. Joseph Cogen: Are you employed at the California Bank, Market and Produce Branch?

(Testimony of Wesley Tamblyn.)

A. Yes, sir.

Q. As an employe there do you have access to the records of the bank? A. Yes, sir.

Q. Do you have records of cashier's checks that are purchased at your bank? A. Yes, sir.

Q. Were you asked to look through your records to see [158] if you had a cashier's check bought and purchased by Ivan Polakof? A. Yes, sir.

Q. Did you find one? A. Yes, sir.

Q. Have you that check here? A. Yes, sir.

Q. Was this purchased at your bank of June 6, 1939? A. Yes, sir.

Q. Who was it purchased by?

A. Ivan Polakof.

Q. And this check is known as California Bank, Market and Produce office, cashier's check No. 11-100250? A. That is right.

Q. And is in the sum of \$1,039.40?

A. Correct.

Mr. Joseph Cogen: Your Honor, I want to let the bank take its check—

The Court: Read it into the record.

Mr. Joseph Cogen: The check is made payable to A. Fratkin, and is signed by W.—

The Witness: No; that is D. K. Kane.

Mr. Victor Cogen: D. K. Kane, who is branch manager of the market and produce branch of the California Bank; is that right?

A. That is right. [159]

Q. And this check is endorsed on the back by—

(Testimony of Wesley Tamblyn.)

A. The payee, A. Fratkin.

Q. And was paid on what date?

A. June 9th.

Q. June 9, 1939? A. That is right.

The Court: Your record shows that was purchased by Ivan Polakof? A. That is right.

Mr. Joseph Cogen: That is all, your Honor.

Cross Examination

Q. By Mr. Hindin: Do you have your record with you to show by whom that check was purchased? A. Yes.

Q. May I see that, please? A. Yes, sir.

Q. I notice on this instrument, entitled, "Exchange, California Bank," dated June 6, 1939, your number 11-100250, that there is the name "Polakof", with a break, and Ivan "Polakof". Does that have any particular significance?

A. No; not all. Just—

Mr. Joseph Cogen: Speak a little louder, please.

A. No; that wouldn't have any significance. I myself wrote "Polakof" here.

Q. By Mr. Hindin: Did you yourself make this? A. Yes. [160]

Q. Do you know how this check was purchased: was it paid for by Ivan in cash or a check to your bank?

A. That I can't say.

Q. Does your record reveal that?

A. No, it wouldn't.

(Testimony of Wesley Tamblyn.)

Q. Did Ivan Polakof have a commercial account in your bank at that time?

A. Yes; he did.

Q. Did he have sufficient in that commercial account, do you know, to cover the check, or were there additions made to that account?

A. No; I don't believe his balance would come—

Mr. Joseph Cogen: Your Honor, we will stipulate it wasn't taken out of the commercial account at that time.

Q. By Mr. Hindin: You have no record, then, as to how this check was purchased? A. No.

Q. Whether it was with a check of some one else, or cash.

A. That I don't know.

Q. Do you recall whether Mr. Ivan Polakof appeared at your bank alone or with some one else at the time this check was purchased?

G A. No; I don't remember whether he was with anyone or not.

Q. In other words, the only record of this transaction [161] is this document?

A. That is all.

Mr. Hindin: That is all.

Mr. Joseph Cogen: That is all, Mr. Tamblyn.

[162]

RAYMOND ENGELL,

called as a witness on behalf of defendants, being duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Raymond Engell.

Direct Examination

Q. By Mr. Joseph Cogen: Are you employed by the Bank of America? A. I am.

Q. What branch?

A. Jefferson and Vermont.

Q. What is your capacity there?

A. Assistant cashier.

Q. Were you asked to bring the escrow records No. 379 of said branch to this court?

A. Yes, sir.

Q. Did you bring them? A. I did.

Q. Does this escrow cover a transaction of some real property located at 1237-39 Riverside Drive?

A. I am not familiar with the property.

Mr. Hindin: Do you have the legal description of that property there?

Mr. Joseph Cogen: I am just looking for it. Here it is. It is 1937 Riverside Drive?

A. Yes. [163]

Q. Did your bank handle an escrow on or about June 1, 1939? A. They did.

Q. And in that escrow did you pay out to the California Bank the sum of \$1,939.23?

A. Yes; that is right.

Q. Did you pay out to Ivan Polakof the sum of \$2,070.60? A. Yes, sir.

(Testimony of Raymond Engell.)

Q. And that escrow was handled with one William H. Rivkin and Anna Rivkin, as grantees, and Ivan Polakof as grantor? A. Yes, it was.

Mr. Joseph Cogen: For the same reason I wish to have these records kept in the bank's hands, your Honor.

The Court: All right.

Mr. Joseph Cogen: That is all.

Cross Examination

Q. By Mr. Hindin: What is the legal description of that property that was sold or transferred?

A. Lots 7 and 8, Block 15, Tract 5635, Book 60, Page 49, Los Angeles County records.

Mr. Victor Cogen: I wonder, Mr. Witness, if you would repeat that?

A. Lots 7 and 8, in Block 15, Tract 5635, City and County of Los Angeles, recorded in Book 60, Page 49 of Maps.

Q. By Mr. Hindin: Who was the grantor in that [164] transaction? A. Ivan Polakof.

Q. Who was the grantee?

A. William H. and Anna Rivkin.

Q. And the total consideration for that property was how much? A. Let me see. \$4500.

Q. Of which sum \$1939 was instructed to be paid to the California Bank? A. Yes, sir.

Q. And the balance of \$2,070.60 was instructed to be paid to Ivan Polakof? A. Yes, sir.

Q. Did you bring down title on that property?

(Testimony of Raymond Engell.)

A. I notice that there has been a title policy called for. If it was issued, I don't know, but I do notice in here that there is a preliminary report on it. I will tell you definitely if I can just thumb through here a minute. Yes, sir: there was a title policy brought down. The only record I have here of it is the bill from the title company.

Q. What was the date of the closing of that escrow, that is, the date that these various funds were paid over?

A. On June 12th—pardon me just a minute. I had better check that. June 16th.

Q. That is 1939? [165] A. Yes, sir.

Mr. Hindin: That is all.

Mr. Joseph Cogen: May the witness be excused, your Honor?

The Court: Yes.

Mr. Joseph Cogen: I have one other witness coming from the California Bank, the home office. I hope to put him on as soon as he comes in, your Honor.

The Court: All right. Proceed. [166]

MARVIN POLAKOF,

having been heretofore sworn, was called as a witness on behalf of defendants.

Direct Examination

Q. By Mr. Joseph Cogen: Mr. Polakof, you have already testified, I believe, that you received

(Testimony of Marvin Polakof.)

a letter from Ivan Polakof requesting you to sign the deed and return it to him?

A. That is right.

Q. How long did it take you, between the time you received that deed, to sign it before a notary and return it to Mr. Ivan Polakof?

A. All within a period of half an hour. I received the letter, took the paper right to the bank, had it notarized and sent it right back, all within half an hour's time.

Q. That is, you mailed it immediately to Ivan Polakof? A. That is right.

Q. From December, 1935, until the present time did you ever exercise any control over the property?

A. I never did.

Q. Did you manage the rental of the property?

A. No, I did not.

Q. To your knowledge did you pay any taxes?

A. No; I did not.

Q. Outside of having the title in your name did you [167] exercise any rights of ownership?

A. I exercised no rights of ownership.

Q. How much money did you personally pay for the property?

A. I paid no money for the property.

Q. Did you pay any money at all in April, 1939?

A. I paid nothing.

Q. In June, 1939? A. I paid nothing.

Q. In December, 1935? A. Nothing.

Q. Did you give to any of your creditors a statement that you owned any property out in Baldwin Park?

(Testimony of Marvin Polakof.)

A. Never. I never considered it my property. Therefore, I never gave them any such statement.

Q. I refer specifically to the Royal Jewelery Company. Did you tell them that you owned the property? A. I did not.

Q. Did you tell May Company that you owned the property? A. I did not.

Q. Did you ever tell Mr. Walther, the attorney, that you owned the property? A. I did not.

Q. Did you ever tell Aeampo Winery of Lodi, California, that you owned the property?

A. No. [168]

Q. Did you, up to January of 1940, issue any financial statements to creditors to obtain credit for the business, which contained a provision that you were the owner of the Baldwin Park property?

A. No.

Q. During the four or five years from 1934 on, the business was doing as much as four, five or six thousand dollars sales per month, or more?

A. You would have to check that, to be accurate, with the bookkeeper.

Q. But that is about right?

A. Approximately.

Mr. Joseph Cogen: That is all.

Cross Examination

Q. By Mr. Hindin: Mr. Polakof, was there any reason for your great haste in sending back this deed to your brother when you received it?

(Testimony of Marvin Polakof.)

A. Well, I like to do things right now and, therefore, I sent it back right away.

Q. Now, Mr. Polakof, prior to this time or prior to the time that you went to the middle west, you had given your father a power of attorney, hadn't you?

The Court: That has been gone into, counsel. He was asked about that.

Q. By Mr. Hindin: Let me ask you this: You said you never exercised any management of this property. Who [169] did manage it?

A. My brother managed it.

Q. Did your father ever manage it?

A. He may have.

Q. As a matter of fact, then, you didn't care who managed it; is that correct?

A. Why, it was never my property.

Q. I see. Now, in 1938 do you recall receiving a quit-claim deed, covering this property, from Mr. Crosby, Mr. Kendall and Mr. Newhouse?

A. No.

Q. I show you a certified copy of a deed and ask you if you have seen that before.

A. To my knowledge I have never seen this paper before.

Mr. Hindin: I offer this in evidence as plaintiff's exhibit next in order.

The Court: It may be received.

The Clerk: Exhibit 12.

(Testimony of Marvin Polakof.)

PLAINTIFF'S EXHIBIT 12

QUITCLAIM DEED

In consideration of \$10.00, receipt of which is hereby acknowledged, I/We, C. E. *Crosbey*, H. C. Kendall, and Frank Newhouse, do hereby quitclaim to Marvin Polakof, all that real property in the County of Los Angeles, State of California, described as:

That portion of Southwest quarter of Section 4, Township 1 South, Range 10 West, S.B. &M., in the County of Los Angeles, State of California, described as follows:

Beginning at a point distant North $1^{\circ} 16' 30''$ East 660 feet from the South line of said quarter Section, and distant North $89^{\circ} 54' 15''$ West 1340 feet from the East line of said quarter Section as said lines are shown on a map of Puente and Azusa Bridge Road, recorded in Book 3842, Page 6 et seq., of Deeds, Records of said County; thence North $89^{\circ} 54' 15''$ West parallel with the South line of said quarter Section 330 feet, thence North $1^{\circ} 16' 30''$ East, parallel with the East line of said quarter section 660 feet, thence South $89^{\circ} 54' 15''$ East 330 feet; thence South $1^{\circ} 16' 30''$ West 660 feet to the point of beginning. Excepting therefrom a 30 foot strip along the North, South, East and West sides for street purposes, including a factory building located thereon.

(Testimony of Marvin Polakof.)

Witness our hands this day of,
1938.

C. E. CROSBY

(C. E. Crosley)

H. C. KENDALL

(H. C. Kendall)

FRANK F. NEWHOUSE

(Frank Newhouse)

State of California,

County of Los Angeles—ss.

On this 12th day of July, 1938, before me, Julia Vanderlic, a Notary Public in and for said County, personally appeared C. E. Crosbey & H. C. Kendall, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that he executed the same.

Witness my hand and official seal.

JULIA VANDERLIC,

Notary Public in and for said County and State.

My Commission expires Sept. 2, 1940.

(Notarial Seal of

Mrs. Julia Vanderlic)

State of California,

County of Los Angeles—ss.

On this 22nd day of July, in the year one thousand nine hundred and thirty-eight, before me, Joseph J. Bellito, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, per-

(Testimony of Marvin Polakof.)

sonally appeared Frank Newhouse, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, in the L.A. County of Los Angeles, the day and year in this certificate first above written.

(Notarial Seal) JOSEPH J. BELLITO,
Notary Public in and for the County of Los Angeles,
State of California.

My commission expires March 9, 1941.

#1007 Copy of original recorded at request of
Grantee, Aug. 5, 1938, 12:12 P.M.

Copyist #117, Compared, R. L. Hazen, County
Recorder, By N. E. Woodel, (39) Deputy.

Q. By Mr. Hindin: Do you know who signed the papers for the lease of this property during this period that it was in your name?

A. I believe it was brought out in court that my father signed that lease.

Q. Did you know he was negotiating for this lease?

A. I had no interest whether he negotiated or not.

The Court: You haven't answered the question.

[170]

A. No, sir.

(Testimony of Marvin Polakof.)

Q. By Mr. Hindin: You didn't know?

A. I didn't know.

Q. Where were you living at that time, at home?

A. Yes, sir.

The Court: With your father?

A. Yes, sir.

The Court: And your father was dealing with this property and you didn't even know he was working on a lease?

A. That is right. You see, I was working in the attorney's office and going to law school, and my interest was taken up in study, knowing that when I got out of law school I would have the business to carry me through and start in the law practice that was always available. I had every confidence in my father's management.

The Court: Did your brother live at home, too?

A. Yes, sir.

The Court: You all lived at home?

A. Yes, sir.

The Court: You did, shortly after the execution of this deed, get married?

A. Well, you see, I went back to Omaha originally to get married to a young lady, but I married another young lady there, and in the interim I came back and then I went back again.

The Court: Referring to this jewelry you bought, [171] was that the wedding ring?

A. Yes, sir.

The Court: Was that the ring you used?

A. Yes, sir. It only lasted for ten months.

(Testimony of Marvin Polakof.)

The Court: That is the ring you bought?

A. Yes, sir. I never intended to defraud them. I always intended to pay.

The Court: You never have, though, have you?

A. I paid all but \$25 of it.

The Court: That is how many years now?

A. I don't recall right now. It may be a year and a half or two years; something like that.

The Court: You haven't paid for the suit you wore out?

A. No; on that particular suit, I was never satisfied with it. I brought it back for adjustments.

The Court: Well, the wedding ring didn't turn out very satisfactorily. Is that the reason you didn't pay for it?

A. Well, that isn't the real reason.

The Court: I will say frankly, gentlemen, a man who can't pay for his wedding ring doesn't stand in very good grace before this court.

Mr. Victor Cogen: I might observe, your Honor, that there have been payments made more or less continually since the wedding ring was purchased. Although the payments were small, they have been paid. [172]

The Court: It doesn't set very good. It is nothing to be proud of.

Mr. Victor Cogen: No; I will grant you that.

The Court: A man in business that has failed, that is a different picture; but a man who fails to pay for the clothes he has worn and a wedding ring he has bought, the court doesn't think much of him

(Testimony of Marvin Polakof.)
or his testimony. You may proceed.

Mr. Hindin: Just one more question.

Q. After the 24th day of April, 1939 did you receive a reconveyance on this property, executed by the Title Insurance & Trust Company, do you recall? A. What was it, a title?

Q. A full reconveyance?

A. Is that from Mr. Fratkin, or myself—to myself?

Q. I show you a full reconveyance, a certified copy of a full reconveyance from the Title Insurance & Trust Company, as trustee, covering the property, which included a deed of trust in which Marvin Polakof—that is yourself—was the trustor, made May 15, 1936, and this reconveyance was executed June 2, 1939. I ask you if you have ever seen that before.

A. I couldn't tell without the balance of it.

Q. This is the entire reconveyance as it appears of record.

Mr. Victor Cogen: Well, counsel, there are reconveyances [173] always given to the parties that pay off the loan, and it doesn't make any difference—

The Court: Let him answer the question. He can answer the question whether he has seen it before or not.

A. I may have seen it. At this time I don't recall.

Mr. Hindin: I offer it as plaintiff's exhibit in evidence.

(Testimony of Marvin Polakof.)

The Court: Received.

The Clerk: Exhibit 13.

PLAINTIFF'S EXHIBIT 13

1630600-Winfield.

Full Reconveyance.

Title Insurance and Trust Company, a California corporation, as Trustee under Deed of Trust, dated May 15th, 1936, made by Marvin Polakof, Trustor, and recorded as Instrument No. 895, on May 18th, 1936, in Book 14174, Page 71 of Official Records in the office of the Recorder of Los Angeles County, California, having received from holder of the obligations thereunder a written request to reconvey, reciting that all sums secured by said Deed of Trust have been fully paid, and said Deed of Trust and the note or notes secured thereby having been surrendered to said Trustee for cancellation, does hereby Reconvey, without warranty, to the person or persons legally entitled thereto, the estate now held by it thereunder. In Witness Whereof, Title Insurance and Trust Company, as Trustee, has caused its corporate name and seal to be hereto affixed by its Assistant Secretary, thereunto duly authorized, this 2nd day of June, 1939.

(Corporate Seal)

HEM

TITLE INSURANCE AND
TRUST COMPANY,

As Trustee.

By R. GEORGE SCOTT,
Assistant Secretary.

(Testimony of Marvin Polakof.)

State of California,
County of Los Angeles—ss.

On June 2nd, 1939, before me, the undersigned, a Notary Public in and for said County, personally appeared R. George Scott, known to me to be the Assistant Secretary of Title Insurance and Trust Company, the corporation that executed the foregoing instrument as Trustee, and known to me to be the person who executed said instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same as Trustee. Witness my hand and official seal.

(Notarial Seal)

HAZEL KELLOGG,

Notary Public in and for said County and State.
No.R-00101.

#66. Copy of original recorded at request of Title Ins. & Tr. Co., June 26, 1939, 8:30 A. M. Copyist #101. Compared, Mame B. Beatty, County Recorder, by H. Kirkland (139) Deputy.
\$1.00-4. B.

Mr. Hindin: Now, just one more question, Mr. Polakof. You testified that you studied law, didn't you? A. Yes.

Q. Did you study the subject of real property law? A. No; I haven't got that far.

Q. You didn't get that far? A. No.

(Testimony of Marvin Polakof.)

Q. Did you study the subject of recordation?

A. No.

Q. Did you study the subject of equity?

A. No.

Q. Did you study the subject of contracts?

A. I just had the first part of contracts.

Q. How many years' law school did you say you had studied?

A. About two years pre-legal and one year of law.

Mr. Hindin: That is all.

Mr. Joseph Cogen: That is all. [174]

RICHARD C. CORBERLY,

called as a witness on behalf of defendants, being duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: Richard C. Corberly.

Direct Examination

Q. By Joseph Cogen: Mr. Corberly, are you employed by the California Bank home office, in the real estate loan department? A. Yes, sir.

Q. Were you asked to bring to this court records of payments on property that you made a loan on?

A. Yes, sir.

Q. Is that property held in your company's files as owned by Ivan Polakof?

A. Well, I will have—

(Testimony of Richard C. Corberly.)

Q. How is it carried on the ledger card?

A. The ledger card is Ivan Polakof. It does not disclose what the security is. I think I have the title company paper here.

Q. Do you have the title papers?

A. I believe so.

Q. Will you please read the legal description on that title paper?

A. Lots 7 and 8, Block 15 of Tract 5635, City and County of Los Angeles, State of California. Do you want [175] the full legal—

Q. Just as much as is down there.

A. As per maps recorded in Book 60, Page 49 of Maps in the office of the county recorder of said county.

Q. And this property, the title is in the name of whom?

A. As of October 7, 1936, the Title Insurance & Trust Company certified it or states that it is in the name of Ivan Polakof, a single man.

Q. And at that time did he make a loan at your bank?

A. Yes. Of course, I don't have the deed of trust, but the notes, according to our records, were dated September 5, 1936, in the amount of \$3,000, and an additional loan was made May 9, 1939, in the amount of \$1,000.

Q. Was that loan ever paid off?

A. Both loans were paid in full on June 17, 1939.

(Testimony of Richard C. Corberly.)

Q. And what was the date of the additional loan? A. May 9, 1939.

Q. How much was that? A. \$1,000.

Q. To whom was that made?

A. Well, the note was signed by Ivan Polakof.

Q. Do you have any knowledge or any showing to whom that money went?

A. I don't know. I don't know what is in here. Up until now I haven't reviewed this file.

Q. Wasn't the signer or maker of the note Ivan Polakof? [176] A. That is correct.

Q. I think that is sufficient. You have a certified copy of the ledger cards?

A. It has not been certified by—

Q. I mean, a photostatic copy? A. Yes.

Q. Are these the photostatic copies?

A. Yes.

Q. I thought you had something else here?

A. I had a negative, was all. These are the negative prints from which those were printed.

Mr. Joseph Cogen: May this be admitted as defendant Ivan Polakof's exhibit?

Mr. Hindin: May we see that first?

Mr. Joseph Cogen: Yes.

The Court: Received.

The Clerk: Exhibit B.

DEFENDANT'S EXHIBIT B

1532-1941
OCT 15 1941
FBI - LOS ANGELES

1532-1941
Appleton, Wisc.
FBI - LOS ANGELES

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702	703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738	739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756	757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774	775	776	777	778	779	770	771	772	773	774	775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798	799	800	801	802	803	804	805	806	807	808	809	8010	8011	8012	8013	8014	8015	8016	8017	8018	8019	8020	8021	8022	8023	8024	8025	8026	8027	8028	8029	8030	8031	8032	8033	8034	8035	8036	8037	8038	8039	8040	8041	8042	8043	8044	8045	8046	8047	8048	8049	8050	8051	8052	8053	8054	8055	8056	8057	8058	8059	8060	8061	8062	8063	8064	8065	8066	8067	8068	8069	8070	8071	8072	8073	8074	8075	8076	8077	8078	8079	8080	8081	8082	8083	8084	8085	8086	8087	8088	8089	8090	8091	8092	8093	8094	8095	8096	8097	8098	8099	80100	80101	80102	80103	80104	80105	80106	80107	80108	80109	80110	80111	80112	80113	80114	80115	80116	80117	80118	80119	80120	80121	80122	80123	80124	80125	80126	80127	80128	80129	80130	80131	80132	80133	80134	80135	80136	80137	80138	80139	80140	80141	80142	80143	80144	80145	80146	80147	80148	80149	80150	80151	80152	80153	80154	80155	80156	80157	80158	80159	80160	80161	80162	80163	80164	80165	80166	80167	80168	80169	80170	80171	80172	80173	80174	80175	80176	80177	80178	80179	80180	80181	80182	80183	80184	80185	80186	80187	80188	80189	80190	80191	80192	80193	80194	80195	80196	80197	80198	80199	80200	80201	80202	80203	80204	80205	80206	80207	80208	80209	80210	80211	80212	80213	80214	80215	80216	80217	80218	80219	80220	80221	80222	80223	80224	80225	80226	80227	80228	80229	80230	80231	80232	80233	80234	80235	80236	80237	80238	80239	80240	80241	80242	80243	80244	80245	80246	80247	80248	80249	80250	80251	80252	80253	80254	80255	80256	80257	80258	80259	80260	80261	80262	80263	80264	80265	80266	80267	80268	80269	80270	80271	80272	80273	80274	80275	80276	80277	80278	80279	80280	80281	80282	80283	80284	80285	80286	80287	80288	80289	80290	80291	80292	80293	80294	80295	80296	80297	80298	80299	80300	80301	80302	80303	80304	80305	80306	80307	80308	80309	80310	80311	80312	80313	80314	80315	80316	80317	80318	80319	80320	80321	80322	80323	80324	80325	80326	80327	80328	80329	80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215

Defendant's Exhibit B (cont)

2436 Brown money

12 months, on 7-5-59 and quarterly

2160 Kehler St., Los Angeles.

FILE NUMBER

5

LOAN NO 5-17824-7

AMOUNT \$1000.00

DATE 6-9-59

MATURITY 7-6-60

(MMU)

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(Testimony of Richard C. Corberly.)

Mr. Hindin: Are you through examining the witness?

Mr. Joseph Cogen: Yes.

Cross Examination

Q. By Mr. Hindin: Mr. Corberly, this record that has just been introduced into evidence shows a series of monthly payments, does it not?

A. Yes, sir.

Q. And the original contract or the original mortgage and trust deed called for the principal sum of \$3,000; [177] is that correct?

A. That is right.

Q. Now, from this card can you tell us how those monthly payments were made; how much was paid on principal and how much was paid on interest from the start?

A. Well, do you want me to read these payments?

Q. Let me ask you this: Were the monthly payments made regularly, according to your register?

The Court: Is that a copy that is in evidence?

Mr. Hindin: Yes.

The Court: It speaks for itself.

Mr. Hindin: All right.

Q. When the second loan was made of \$1,000, can you tell us from your register here what the balance unpaid was on the original loan?

A. Well, the second loan or the additional loan was made May 9, 1939, and there was a payment on the main note on the same date, so the balance as of

(Testimony of Richard C. Corberly.)
the close of business as of that day was \$965.22 plus
the \$1,000 additional loan.

Q. In other words, a \$3,000 obligation had been
paid down to \$900 and a new loan of \$1,000 made
on that day; is that correct?

A. That is correct. In going through the file I
see a copy of an exchange requisition for \$909.20
on May 23, 1939, which would have ordered a
cashier's check in favor of Ivan Polakof. The dif-
ference in indebtedness is made [178] up by loan,
expenses, and probably the payment on this—this
\$75 payment that was made on that day.

Q. I see.

Q. By Mr. Joseph Cogen: How much was that
for? A. \$909.20.

The Court: Any further questions?

Mr. Hindin: I have no further questions.

The Court: That is all.

Mr. Joseph Cogen: May the witness be excused?

Mr. Hindin: Yes.

Mr. Victor Cogen: I wonder if the witness testi-
fied what date that loan was paid off?

The Court: I don't think it makes any difference.
The Bank of America records show that loan was
paid off. The property was clear.

Mr. Hindin: June 17, 1939.

The Court: Call your next witness. [179]

IVAN POLAKOF,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Ivan Polakof.

Direct Examination

Q. By Mr. Joseph Cogen: Mr. Polakof, did you on or about the 7th of June, 1939, pay an encumbrance on the Baldwin Park property of \$1,000 to Mr. Fratkin?

A. I did.

Q. Will you explain to the court the transactions that took place and how you raised that money?

A. As already explained, I had an original loan at the main office of the California Bank for \$3,000, which I paid down to around \$800; and then when I had to raise that \$1,000, also on the same security the bank gave me an additional thousand dollars to pay Mr. Fratkin.

Q. Who owned that property and where was it located?

A. The property? I owned the property. The property was located on Riverside Drive.

Q. How did you acquire that property?

A. That was a gift from my grandfather.

Q. About how long before that?

A. About four years before.

Q. Before 1939? A. That is right. [180]

Q. You may continue with the transaction.

(Testimony of Ivan Polakof.)

A. And I then owed the bank some \$1900. I sold the property and through the escrow they paid off the loan to the California Bank and I received some \$2700 as a balance of the sale price of \$4,500.

Q. Was that \$2700 or \$2070?

A. It was around \$2,000. \$2,070. If I had a pencil and paper I could figure it. It was in escrow there.

Q. About what time was that?

The Court: The record speaks for itself as to the transaction.

Mr. Joseph Cogen: Yes; it does, your Honor.

Q. I show you a check and ask you if that is your signature thereon. A. That is.

Q. That check is drawn on the Market and Produce branch of the California Bank?

A. That is right.

Q. In the sum of \$155.20? A. Right.

Q. And dated June 7, 1939?

A. That is right.

Q. And on one corner of this check is written the word "Fratkin"? A. That is right.

Q. And on the reverse side of this check, on the back, [181] is number 11-100251? A. Right.

Q. You were in court this morning when a cashier's check in the sum of \$1039.40 was read to the court? A. That is right?

Q. And it had numbers somewhat similar to the numbers I have just read on the reverse side of this check? A. That is right.

(Testimony of Ivan Polakof.)

Q. Do you know the circumstances of the payment of this check to the California Bank?

A. I do.

Q. Will you explain it?

A. When I applied for the loan of \$1,000 I was short \$155.20, because the bank only gave me nine hundred and some odd dollars, and Mr. Kane, the manager, called me over and said that in order to make a thousand dollars I would have to add \$155.20, and I gave him my check. That made the total with which I bought a cashier's check to Mr. Fratkin to pay off my obligation to him.

Q. As a matter of fact, it was a few dollars more than a thousand dollars?

A. \$32 more, to be exact.

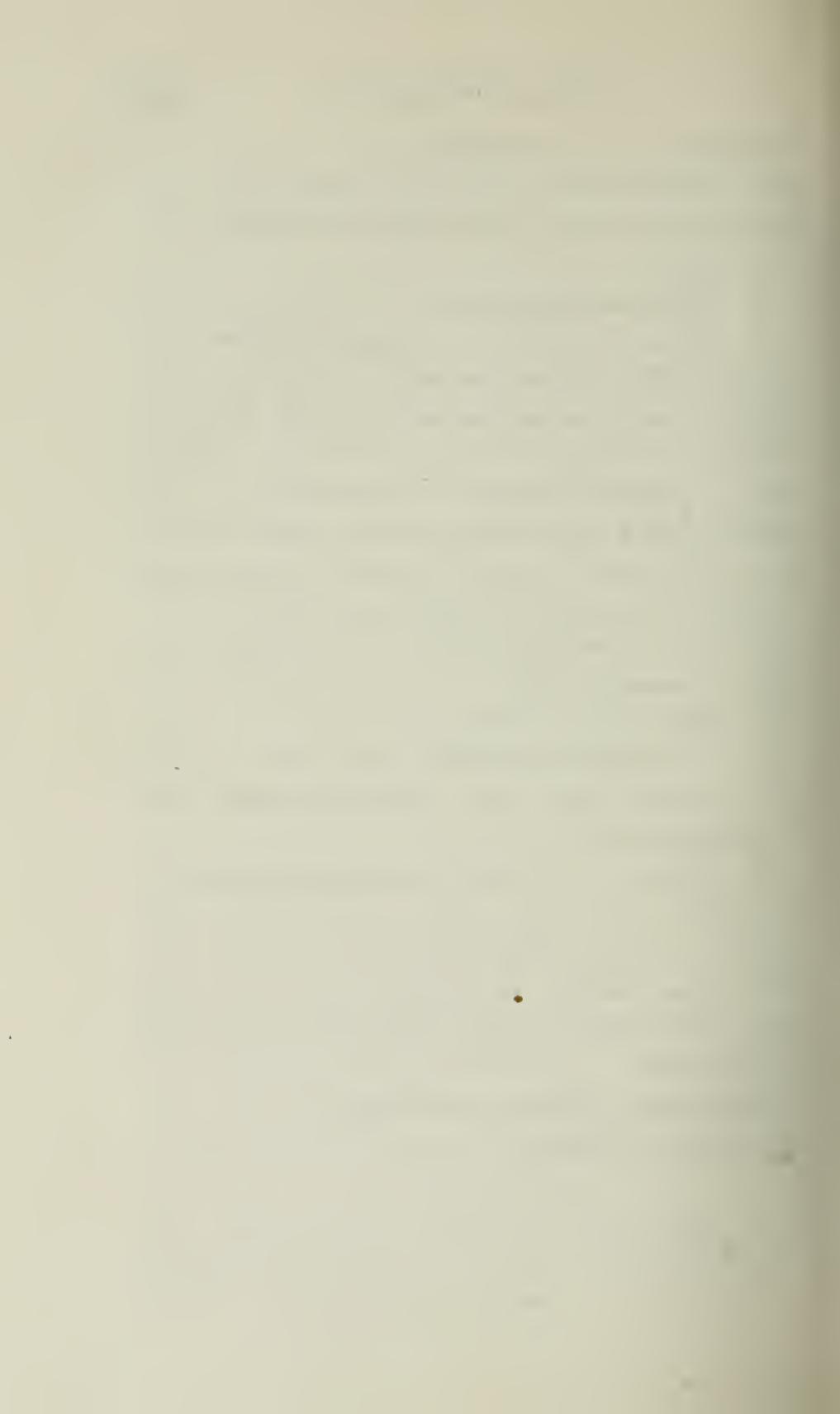
Q. I believe it was \$39.40, to be exact.

Mr. Joseph Cogen: May this be defendant Ivan Polakof's exhibit?

Mr. Hindin: I will object to the introduction of this [182] if the Court please, on the ground that the payee of the check appears to be the California Bank, and that any connection that it may have with a Mr. Fratkin in this transaction is not shown by the record.

The Court: Objection overruled.

The Clerk: Exhibit C.



MARKET AND PRODUCE OFFICE

No. _____

California Bank

16-166
601 SOUTH CENTRAL AVENUE
COMMERCIAL SAVINGS

Los Angeles, Cal.

Pay to the order of
One hundred and eleven dollars

111.11

Zeta

1532-194-6

1532-194-6

1532-194-6

1532-194-6

1532-194-6

1532-194-6

08-152001-11

(Testimony of Ivan Polakof.)

Q. By Mr. Joseph Cogen: Do you recall the facts involving the Baldwin Park property, or property designated and known as Baldwin Park property, on or about the latter part of the year 1935? A. Yes.

Q. Did you at that time arrange for the purchase of that property? A. I did.

Q. In whose name was that property placed at that time?

A. At that time it was placed in Marvin Polakof's name.

Q. Did Marvin Polakof put up any money for the purchase of that property? A. No.

The Court: Why did you put it in Marvin's name?

A. My father came to me and told me of the sale of this property in the court. I wasn't very interested, because I expected to go east to school. He convinced me it was a good one, so I raised \$1300 and I said, "Put it in Marvin's name, because I am going east." And I expected a quick sale, and I was buying it with Mr. Fratkin for a [183] quick sale. And I said, "Go ahead and let Marvin sign for it, because I don't want to be bothered with it. I want to go east to school." And I went east and I came back, and Mr. Fratkin decided to sell me his interest. This transaction is how I paid Mr. Fratkin off. But when I decided I was going to own the property myself I sent this deed to Marvin to sign, so I could bring down the ownership.

(Testimony of Ivan Polakof.)

The Court: Why did you hold the deed so long?

A. Because I was advised I didn't have to record the deed.

The Court: Who advised you?

A. Mr. Albright. He said he knew many cases where you just hold the deed until you are ready to bring down the certificate of title. And I followed his advice and brought down the certificate of title in 18 months and before any of this trouble existed. That was before this bankruptcy. It was in my name, the certificate of title, the recordation and all, before any of this trouble came up. And I didn't anticipate my father passing away and my brother taking on another party, so I don't believe I took it out of his name to cheat anyone.

Q. By Mr. Joseph Cogen: I show you a policy of title insurance with the Title Insurance & Trust Company of Los Angeles, California, designated Policy No. 1,630,600, and ask you if you have ever seen this policy of title insurance before. [184]

A. Yes.

Q. Is that policy of title insurance dated the 26th day of June, 1939? A. It is.

Q. Does it cover the property known as the Baldwin Park property? A. It does.

Q. Does this legal description, which starts out, "That portion of the southwest quarter," and so forth, cover the Baldwin Park property?

A. Yes, sir.

Q. Are you designated as the owner?

(Testimony of Ivan Polakof.)

A. I am.

Q. And does it read, paragraph 1, as follows: "The title to said land is, at the date hereof, vested in Ivan Polakof." And dated August 27, 1937? A. Right.

Q. Was this policy of title insurance drawn up at your request by the title company?

A. It was.

Q. Subsequent to the payment of the thousand dollars? A. Right.

Q. I show you Plaintiff's Exhibit 13, which has previously been described as a full reconveyance. Was this reconveyance intended as a reconveyance—

The Court: It speaks for itself. [185]

Mr. Joseph Cogen: I don't think it refers to the legal description, your Honor.

Mr. Victor Cogen: If you are willing to stipulate that it refers to that thousand-dollar trust deed that was given to Mr. Fratkin—

Mr. Joseph Cogen: Just a minute. I think I am wrong, your Honor. It was made by Mr. Brody.

Q. Who prepared it?

A. This was prepared in his office, and recorded.

Mr. Joseph Cogen: Will you stipulate that the property involved a reconveyance of that \$1,000 trust deed?

Mr. Hindin: If that is what the record shows.

Mr. Victor Cogen: Well, let's compare it.

The Court: Proceed, gentlemen. You are spending time on a lot of matters that are immaterial

(Testimony of Ivan Polakof.)

until there is some evidence to the contrary. This shows that this man paid off a thousand-dollar loan. You are spending too much time on it.

Mr. Joseph Cogen: The only reason I brought this in is that the plaintiff mentioned it in examining Marvin Polakof, and he knew nothing about it.

The Court: That wouldn't make any difference.

Q. By Mr. Joseph Cogen: You testified, I believe, that you raised \$1300 at that time to pay for the property? A. That is right.

Q. And that was for all the property or half the [186] property or a third, or what?

A. One-half of the property.

The Court: \$1300 in cash?

A. Right. The property was sold for around \$2600 at a court sale. Mr. Fratkin paid half and I paid half. That is how—

The Court: I thought there was a loan on the property; that money was borrowed to pay for that?

A. No, sir. The loan was made on the Riverside Drive property. I didn't put any loan at all on the property.

The Court: Where did you get the \$1300?

A. I had \$800, and \$300 borrowed from my uncle Rudy. And when my father went to court we didn't think it was going to go \$1300, and he advanced \$200 of his money.

Q. By Mr. Joseph Cogen: Before this time were you in business for yourself or with any company?

(Testimony of Ivan Polakof.)

A. Yes. I started the wine business. I was in the wine business.

Q. Were you connected with the Monte Christo Winery? A. I was.

Q. Did you make considerable money out of that transaction?

Mr. Hindin: I object to that as incompetent, irrelevant and immaterial.

The Court: Well, it is an indefinite term, anyhow. He has made an explanation of his money. He said he borrow- [187] ed \$800 of it.

A. No. I had \$800. I borrowed \$300.

Q. Where did you borrow the \$300?

A. From an uncle.

The Court: Your brother didn't loan you any money in this? A. No, sir.

The Court: Proceed.

Q. By Mr. Joseph Cogen: Within two years preceding that time didn't you make \$10,000 in one winery deal?

A. I did, and I paid income tax on \$8,000 of it.

Mr. Hindin: I move that last part be stricken as not responsive, and immaterial.

The Court: Objection overruled.

Q. By Mr. Joseph Cogen: After you received the deed from Marvin did you exercise exclusive control over that property from that date to date?

A. I had always exercised control over that property.

Q. Did you pay taxes on that property?

(Testimony of Ivan Polakof.)

A. I paid taxes on the property.

The Court: What was your occupation at the time you bought this property?

A. I was a pharmacist and working in the wine business. I originally started the Ace Distributing Company, after I left the Monte Christo Vintage Company.

The Court: What is your occupation now? [188]

A. A wine chemist at a very large winery at Escalante California. I am trying to go back to school.

Q. By Mr. Joseph Cogen: Weren't you also with the Southern California Winery?

A. I was. I was with the Southern California Winery for at least a year.

The Court: Do all wineries put out the same grade of wine under different brands—

A. That is a trade secret.

The Court: —the same as the Ace did?

A. I wouldn't be a party to that.

The Court: The Ace, as I understand, was putting out three different brands of wine, all the same grade.

Mr. Joseph Cogen: I think the witness said it is a trade secret, your Honor. I think they do have a vintage wine.

The Witness: They do.

Mr. Victor Cogen: I think Mr. Ehrlich's father could tell more about the wine business.

The Witness: Yes; we have a wine expert right here.

(Testimony of Ivan Polakof.)

Mr. Victor Cogen: It is Mr. Ehrlich's father.

Mr. Ehrlich: Does your Honor want an expert opinion? It isn't done by legitimate houses; I will say that.

The Court: It isn't part of the case, anyhow.

Q. By Mr. Joseph Cogen: I show you four checks. Are these all signed by you? [189]

A. Yes.

Q. Were these used to pay taxes on the Baldwin Park property? A. They were.

Q. I call your attention to one specific check, which check appears to be dated December 4, 1939, and on the reverse side it says, "Baldwin Park"—

The Court: Who is this made payable to?

Mr. Joseph Cogen: The county recorder.

The Court: The county recorder?

Mr. Joseph Cogen: And one to H. L. Byram, county tax collector. And J. W. Bachelor, tax collector.

The Court: What is J. W. Bachelor?

A. He changed places, I think.

The Court: No. J. W. Bachelor is tax collector of San Bernardino County.

Q. By Mr. Joseph Cogen: Did you have property in San Bernardino County?

A. Yes. In San Bernardino Canyon. That is a little cabin I had there. It states right on here, "San Bernardino County."

The Court: That hasn't anything to do with this.

(Testimony of Ivan Polakof.)

Mr. Joseph Cogen: No. I will remove that. In fact, it was cashed in San Bernardino.

The Court: Give me the three checks that you are trying to introduce. [190]

Mr. Ehrlich: Your Honor, I inspected them, and only one that Mr. Cogen has in his hand is material. He hasn't identified the others as pertaining to this particular piece and parcel of property.

The Court: There is only one; the check that indicates it is Baldwin Park property.

Mr. Joseph Cogen: Yes; one specific check indicates that.

The Court: I think that is the only one that is admissible. He can testify whether he paid the taxes on it.

Q. By Mr. Joseph Cogen: Did you pay the taxes on the property?

A. The first year the building was leased the True-X Chemical Company paid the taxes on the property.

Q. And after the first year?

A. I paid the taxes.

Q. You personally paid the taxes?

A. That is right.

Mr. Joseph Cogen: May the check dated December 4, 1939, to H. L. Byram, county tax collector, in the sum of \$80.91 be admitted as Ivan Polakof's next exhibit?

The Court: Admitted.

The Clerk: Exhibit D.

MARKET AND PRODUCE OFFICE

California Bank

901 SOUTH CENTRAL AVENUE
COMMERCIAL

No. 16-166
Los Angeles, Cal. DEC 4 1939

To the
order of
H. L. Byram, County Tax Collector
—Eighty and 91cts.—

Dollars
Dana Palack

Books 32-1347 C.W.
Bathatory, Inc.
Pulaski, Ind.
No. D
EXHIBIT
Filed OCT 15 1941
R. S. ZIPPERER, Clerk, Jno.
By

16-5
DEC 23 1939
BANK OF LOS ANGELES
CENTRAL BANKS NATIONAL
FIRST & SPRING SWARNS
DEPT. OF THE ORGANIZATION
OF THE D.R. SAN MIGUEL
OR THROUGH
C.R. SWARNS
16-3
16-2
16-1
16-0
16-9
16-8
16-7
16-6
16-5
16-4
16-3
16-2
16-1
16-0

Los Angeles County Tax Collector
H. L. Byram
H. L. BYRAM
#8522 1939
ANY BANK OR FIRM
Prior Endorsements
PAY TO THE CREDIT OF
CITY OF LOS ANGELES

Q. By Mr. Joseph Cogen: During the time you owned this property have you made any improvements on the property? A. I did. [191]

Q. Could you enumerate the improvements?

A. I could. Three partitions that I removed, so I could raise the roof. I had to brace the roof. That amounted to—it was under contract, on bracing the roof—\$310 for the contract, the amount. About \$70 for floor plans and permit from the county to do that work.

Q. Did you also pay for the water stock?

A. I did.

Q. How much was that?

A. \$500. That was payable \$50 a month and the moneys came from the rent of the lease to the True-X Chemical Company.

Q. Is that the same water stock—

The Court: That is sufficient, counsel. Let him bring it out on cross examination, if there is any question about that. We are spending too much time in details.

Q. By Mr. Joseph Cogen: Is that building in good condition at the present time?

A. No, sir. I have an estimate to repair the roof for \$1400. Otherwise, if the rains start now you couldn't keep a tenant in there at all. And that can be inspected at any time.

Q. Were you around the premises of the Ace Distributing Company at any time during December 1938 and January, 1939? A. Yes, sir.

(Testimony of Ivan Polakof.)

Q. Is that one of the periods that you were temporarily [192] working at the Ace?

A. Right.

Q. Who was the owner of the Ace Distributing Company? A. Marvin Polakof.

Q. Did anyone else represent themselves as the owner of that company? A. No, sir.

Q. To your knowledge?

A. To my knowledge.

Q. At that time were you acquainted or did you talk to anyone with reference to a transaction with the Acampo Winery?

A. Any particular transaction?

Q. I refer to the bottled wine transaction.

A. Yes; I did have a conversation with them on that.

Q. Who did you have the conversation with?

A. With Mr. Ventura and Mr. Gunther.

Q. Who is Mr. Gunther?

A. Mr. Gunther was at that time president of the Acampo Winery.

Mr. Hindin: We object to that on the ground that there is no proper foundation laid as to the agency. This man isn't competent to testify as to another man's work.

The Court: Objection sustained.

Mr. Joseph Cogen: Your Honor, for the purpose of [193] showing that Mr. Gunther was the president at that time, if I may go into that I can produce a witness, who is now in the court room——

(Testimony of Ivan Polakof.)

The Court: But the point is, this man hasn't any authority.

Mr. Joseph Cogen: This man hasn't any authority?

The Court: No.

Q. By Mr. Joseph Cogen: Who was present at that time?

A. I believe that—if the bookkeeper has the authority I believe the bookkeeper understands that transaction from the beginning—the case goods transaction.

Q. Was Marvin Polakof present?

A. I don't recall.

Q. Was Sam Polakof present?

A. Yes, sir.

Q. Sam Polakof was present? A. Yes, sir.

Q. Do you know what capacity Sam Polakof had with the Ace Distributing Company?

A. He was just managing it for Marvin Polakof.

Q. Did you overhear a conversation between Mr. Sam Polakof and Mr. Gunther and Mr. Henry Ventura? A. Yes.

Q. With reference to this bottled merchandise?

A. That is right.

Q. Would you tell the court what that conversation was? [194]

Mr. Hindin: We will object on the ground that it is irrelevant and immaterial, on the further

(Testimony of Ivan Polakof.)

ground that no proper foundation has been laid, on the further ground that the matter, if testified to, is not relevant and is hearsay as to the plaintiff in this matter.

The Court: You put on the bookkeeper of the winery to attempt to prove the delay in the payment of these bottled goods. Do you mean to say they can't bring any contradictory evidence in on that?

Mr. Hindin: Yes, your Honor. They can bring contradictory evidence provided it is competent.

The Court: I think it is as competent as the bookkeeper's testimony. I am going to admit it.

Mr. Ehrlich: Your Honor, we have no objection to the bookkeeper or an officer of the winery testifying as to that, but this man had no authority to bind the Ace Distributing Company or the creditors whom we represent.

The Court: Well, he said he overheard a conversation between his father and a representative of the winery. He is not repeating his own conversation. There is evidence here that the father, Sam Polakof, was acting as manager, and his authority isn't in dispute.

Mr. Hindin: I withdraw my objection.

Q. By Mr. Joseph Cogen: What was that conversation, as nearly as you can relate it?

A. Well, as nearly as I can relate, the Acampo Winery [195] asked the Ace Distributing Company to store this wine in their premises, so that they

(Testimony of Ivan Polakof.)

could send down salesmen to start a sales campaign. In fact, the Acampo Winery paid the salesmen direct. The salesmen went out and made sales, they took orders on sales blanks—on order blanks that stated, "Acampo Winery, Southern California Agent."

Mr. Hindin: We object to that on the ground that it is certainly incompetent, irrelevant and immaterial, and is hearsay with reference to any matters here, and is not a proper conversation. It is going into conclusions of this witness.

The Court: Yes. He is not answering the question.

Q. By Mr. Joseph Cogen: What was the conversation?

The Witness: I am sorry.

Mr. Hindin: In order that the record might be correct I move that last part be stricken.

The Court: That portion of the answer may be stricken.

The Witness: I am sorry.

The Court: Just tell what the conversation was; not what you saw.

A. The conversation was that this wine was to be stored in the Ace Distributing Company and that the Ace was never to be billed for it and never have to pay for it until some sort of settlement could be arranged to see how this wine was going, with the salesmen. If it went over they would pay

(Testimony of Ivan Polakof.)

for it; if it didn't, they wouldn't. And this wine [196] didn't go over.

Mr. Hindin: I move that last part be stricken.

The Court: Yes.

The Witness: I don't know how to—

The Court: Anyhow, it was to be brought there and they would put on a sales campaign?

A. Yes.

The Court: That was the substance of the conversation?

A. That was the substance of the conversation.

Q. By Mr. Joseph Cogen: Do you know the manner of payment of the Acampo Winery bills? Did they bill you directly or did they send trade acceptances?

The Court: I think that has been gone into.

Mr. Victor Cogen: The only purpose of that is to show—

The Court: Here is the proposition: It is a bill, a statement that has been approved in the bankruptcy proceedings and recognized as a claim. I am not going to try that claim over again.

Mr. Victor Cogen: I don't mean it that way.

The Court: You are just arguing about a lot of things that don't mean a thing, in my judgment.

Mr. Victor Cogen: May I make a statement?

The Court: Yes.

Mr. Victor Cogen: Every invoice had a trade acceptance, as shown by the testimony, except those invoices relating to bottled goods, and we want to

(Testimony of Ivan Polakof.)

show that that was handled [197] differently and that nothing was done until about a year later.

The Court: This man doesn't know about that. He wasn't working there, except occasionally.

Mr. Victor Cogen: All right, your Honor.

The Court: The bookkeeper has that information.

Mr. Victor Cogen: That is all.

Cross Examination

Q. By Mr. Hindin: When did you first receive this Lot 7 and 8 from your grandfather?

A. I would have to refer to the date on the deed. I don't recall the exact date. I know it was some years ago.

Q. Was your grandfather named Rena Polakof?

A. No; that was an aunt. That was my grandfather's daughter.

Q. And this property was in the name of Rena Polakof when you got it?

A. That is right.

Q. In other words, your grandfather had this daughter give it to you?

A. That is exactly right.

Q. Does this date refresh your recollection, July 7, 1932, as the date you acquired that property?

Mr. Victor Cogen: Is that the date on the deed from Rena Polakof to Mr. Polakof? [198]

Mr. Hindin: Well, we will get into that.

A. I don't recall it.

(Testimony of Ivan Polakof.)

Q. Pardon? A. I don't recall it.

Q. Did you record the deed to that property, do you know?

The Court: The record is the best evidence, counsel.

A. I have no knowledge going back that far.

Q. By Mr. Hindin: Anyway, since the time that you got the deed from Rena Polakof you were the owner of that property. Did anybody else deal with that property for you? A. Yes.

Q. Who did? A. My father.

Q. Your father dealt with these lots for you?

A. Yes.

Q. And there were numerous transactions, were there not, with reference to this property before this Rivkin sale? A. Numerous transactions?

Q. Yes.

A. I believe there was one, a lease.

Q. There was a trust deed, was there not, on this property then?

A. Yes; I believe so. I had to put a trust deed to get a loan on it.

Q. And that first trust deed was away back in 1933, [199] was it not?

A. The first one? Yes; I believe so.

Mr. Victor Cogen: If your Honor please, I am going to object to this. It is wholly immaterial to this case.

The Court: It seems to me the record is the best evidence. To ask a man about a transaction when

(Testimony of Ivan Polakof.)

there is better evidence available, I think is unfair.

Q. By Mr. Hindin: Do you remember what the amount of this previous trust deed on this lot 7 and 8 was; the amount of it?

Mr. Victor Cogen: If your Honor please, I make the objection that the record is the best evidence.

The Court: I am going to sustain the objection.

Q. By Mr. Hindin: Do you recall, Mr. Polakof, having a transaction with a man by the name of R. R. Sweeney? A. Yes, sir.

Q. Do you recall that you were engaged in a lawsuit with Mr. Sweeney? A. I do.

Q. Do you recall that on February 13, 1935, Mr. Sweeney secured a judgment against you?

A. He didn't secure judgment against me. He secured a judgment against Cognac Winery.

Q. Were you not named as an individual defendant in that case?

A. I was; and then the Judge of the court ruled it out. [200]

Q. What interest did you have in that Cognac Winery?

A. I owned 50 per cent of the stock.

Q. Now, do you have any information or knowledge concerning an abstract of judgment that was filed, in which you were named as the judgment creditor by Mr. Sweeney?

A. I don't understand the terms. I don't know.

Q. In 1935?

(Testimony of Ivan Polakof.)

A. The terms you are speaking of, I am not acquainted with them.

Q. Do you know whether this judgment was ever satisfied on the—

Mr. Victor Cogen: Just a minute. Your Honor, I think if there is a judgment—

The Court: I think the judgment is the best evidence.

Mr. Hindin: Very well. We will produce that judgment, then.

The Court: All you are doing is proving that this man had a reason for not putting the property in his own name. That is all you are doing.

Mr. Hindin: This is an equitable proceeding, your Honor.

The Court: I know, but that is all right.

Q. By Mr. Hindin: With reference to this Baldwin Park property, did you go back to school after it was purchased?

A. I spent some time in school after the purchase of it. [201]

Q. Where did you go to school?

A. I went to the Kirksville College of Osteopathy and Surgery, Kirksville, Missouri.

Q. During that time your father handled this property?

A. There wasn't much to handle. He would look out for it for me, sure.

Q. When did you return from school?

(Testimony of Ivan Polakof.)

A. I returned several times from school. I was called back home.

Q. When was the first time you were called back home?

A. At the time of this first bankruptcy hearing.

Q. Well, you were back home in January of 1939, were you not?

A. Yes. I was attending school here.

Q. You were attending school here?

A. In Los Angeles.

Q. At that time? A. Yes, sir.

Q. Were you in business at that time?

A. I was helping out at the Ace.

Q. You were helping at the Ace Distributing Company? A. Right.

Q. Who was working at the Ace then?

A. Do you want the individuals?

Q. Yes.

A. Marvin Polakof was the owner. My father worked [202] there. We had several employees.

Q. Who were they?

A. I, and Mr. Kahn was there.

Q. How long did you work there?

A. It was always off and on; never anything definite.

Q. You lived at home, did you? A. I did.

Q. Did you ever discuss with Marvin and with your father the affairs of this business?

A. Just the welfare of it.

Q. Yes. Did you have any information of with-

(Testimony of Ivan Polakof.)

drawals of money from that business from January, 1939, to April, 1939? A. No.

Q. You didn't know money was being withdrawn?

A. I don't know of any specific money that was being withdrawn, no.

Q. You don't? A. No.

Q. Did you withdraw any money from that business?

A. From time to time they would make me little personal loans to help out, which I repaid.

Q. When did you repay it?

A. The books will have to show that. I couldn't give the dates.

Q. As of April 24, 1939, did you owe the business any [203] money?

A. I might have owed them some money. I don't know the exact amount.

Mr. Joseph Cogen: Aren't the books the best evidence, counsel?

Mr. Hindin: This is cross examination.

Mr. Joseph Cogen: All right.

Mr. Victor Cogen: If your Honor please, Mr. Polakof is suffering with a heart trouble. He just made a motion to his heart, and I am just wondering if the court wants to excuse him for a few minutes. Do you want to be excused?

The Witness: I have documentary evidence to that effect.

Mr. Victor Cogen: No. That is all right.

(Testimony of Ivan Polakof.)

The Court: We will take a five-minute recess at this time.

(Recess.)

Q. By Mr. Hindin: Mr. Polakof, were you in Los Angeles between January 1, 1939, and April, 1939? A. I don't know. When; 1939?

Q. Yes.

A. Will you state the date once more, please?

Q. From January 1st to the end of April.

A. In 1939?

Q. Yes. A. Yes; I was in Los Angeles.

Q. During that time you were living at home?

[204]

A. Right.

Q. Did you ever see a financial statement of the Ace Distributing Company at your home——

A. No, sir.

Q. During that time? A. No.

Q. Did you know the condition of the business at that time?

A. As far as the books go, no. All I knew is that they were paying their bills and going right along.

Q. Did you discuss with your father and Marvin the advisability of recording this Baldwin Park property deed at that particular time?

A. No, sir.

Q. At any time? A. Never.

Q. Did you ever write your father a letter respecting this property? A. Never.

Q. You never did? A. Never.

(Testimony of Ivan Polakof.)

Q. In other words, your father, to your knowledge, did not know that this deed to you was being recorded at that time?

A. The one I sent to Marvin at Omaha?

Q. Yes. [205]

A. Surely; I told my father what I was doing.

Q. You told him you were going to record it?

A. That is right.

Q. Did you ever authorize your father to specify or indicate that he was the owner of this property?

A. At no time, no.

Q. Pardon? A. I never did.

Q. You say you started the Ace Distributing Company; is that correct? A. That is right.

Q. And when did you start it?

A. I can't tell the date. I left the Monte Christo Vintage Company one month after that. That was in 1935 some time, I believe.

Q. Some time in 1935?

A. I would have to refer to the records.

Q. Pardon.

A. I would have to refer to the license to give you the exact date.

Q. How long did you own the Ace Distributing Company's business?

A. Up until the time I gave it to Marvin.

Q. When did you give it to Marvin?

A. On the date of the new application for license.

Q. What date was that? [206]

(Testimony of Ivan Polakof.)

A. I don't recall. I would have to check with the license.

Q. Approximately what year, as nearly as you can ascertain or remember?

A. I wouldn't want to make a statement. Dates don't agree with me and I—it is a matter of record. You have it on the license, so I—

Q. Well, can you fix the time by anything other than—

A. No—oh, yes, I can fix that. At the time of transfer to Marvin I went to work for the Southern California Winery.

Q. That was the time you gave Marvin your business? A. That is right.

Q. Did Marvin pay anything for that business?

A. No, sir.

Q. You just gave it to him?

A. It was an out and out gift.

Q. It was an out and out gift?

A. Just to give him a start.

Q. How much money did you have invested in the business?

A. The fixtures and equipment, about \$700 for equipment. The good will was worth something—the good will and customers I developed.

Q. Did you give him title to that business, or did you just have an understanding?

A. No; it was handled by a counsellor. There was a [207] license.

(Testimony of Ivan Polakof.)

Q. Aside from this license procedure what did you do with reference to turning over the assets?

A. I don't know.

Q. You didn't do anything, did you?

A. I made it known to everyone that I was in the Southern California Winery. I established myself there. They knew that, according to law, I couldn't be there and have any interest in any distributing company. They knew if they did business with Marvin they were doing it solely on their own, and not with me.

Q. Was this before or after the Baldwin Park property was acquired?

A. Before I transferred—before the property went to Marvin?

Q. Yes. When you gave this business to Marvin was that before or after you acquired the Baldwin Park property?

A. Once again I would have to refer to the date.

Q. Do you have any recollection of that?

A. No, sir. It didn't impress me as being important.

Q. You knew, then, that Marvin was in business for himself, didn't you?

A. Yes; I knew that.

Q. And you knew that title to this Baldwin Park property was in his name, didn't you?

A. Yes. It is a matter of record. Sure. [208]

Q. And notwithstanding that you knew he was

(Testimony of Ivan Polakof.)

in business and that the property was in his name
you did nothing about it?

A. I impressed upon him that he should never hold himself out that he was the owner of that property. And he never entered it on any financial statement, even when it was in his name. Everyone that knew me will say that it was my property. In fact, they didn't know Marvin.

Q. But why did you warn Marvin not to hold it out to his creditors?

A. I didn't want him to represent to the creditors that he had that property.

Q. But you knew he had creditors in the business, didn't you?

A. But he wasn't getting credit on that particular piece of property.

Q. Notwithstanding the fact that you knew all that, you continued to leave it in his name. Did you ever, up to April, 1939, ask Marvin how much he owed in his business? A. No.

Q. You did know, did you not, that with Marvin having title to this property in his name, creditors or people doing business with him could suspect him of owning it, did you not?

Mr. Joseph Cogen: Just a minute—[209]

The Court: That is going a little bit too far, counsel. Objection sustained.

Q. By Mr. Hindin: How old were you—well, I will ask you this: How old are you now?

(Testimony of Ivan Polakof.)

A. 31. You did not catch me like you did my brother.

Q. Did you ever pay your father back that \$300?

The Court: That is immaterial, counsel.

Mr. Hindin: That is all.

Mr. Joseph Cogen: That is all.

Mr. Victor Cogen: I wonder if Mr. Ivan Polakof can be excused from attendance here? We will have him either at the hotel or at my office in the event counsel wants him.

The Court: All right. [210]

MAURICE KAHN,

recalled as a witness on behalf of defendants, testified as follows:

Direct Examination

Q. By Mr. Joseph Cogen: Did you make a statement, from the records and books of the company, as of August 30, 1937?

A. Yes. I inspected the ledger and made up a trial balance.

Q. What does it show the total amount of gross assets?

A. August 30, 1937, the records I found show—taking the inventory as of the first of the year—show the net worth of \$2,424.06.

Mr. Hindin: How much was that?

(Testimony of Maurice Kahn.)

A. \$2,424.06.

Mr. Joseph Cogen: I don't think he answered my question, but I will leave it stand.

The Court: That is what you are driving at, anyhow.

Mr. Joseph Cogen: Yes. He has answered it, yes.

Q. Did you also take a statement on September 30, 1937? A. Yes.

Q. What does the net worth show at that time?

A. \$2,583.56.

Q. Did you ever have any conversations with—

Mr. Victor Cogen: Do you mind if I handle the rest of the examination? [211]

The Court: Go ahead.

Q. By Mr. Victor Cogen: Do the books indicate that the property known as the Baldwin Park property was listed as an asset of the business?

A. It was never listed on the books. It was never carried on the books.

Q. In other words, as far as the books of the Ace—

The Court: That has been asked and answered, counsel.

Mr. Victor Cogen: All right.

Q. I am going to ask you in reference to this matter of the Acampo Winery. Just to refresh your recollection, all of the invoices of the Acampo Winery were paid by trade acceptances—

A. That is right.

Q. ——except this one matter which I am going

(Testimony of Maurice Kahn.)

into at this time. Was that the course of business for about four or five years before and after, from about 1935 to 1940?

A. Well, I would have to refresh my memory from the records to a great extent, but as I remember, at one time one of the representatives of the Acampo Winery came down and checked over the money—the balance due—and we found out that there were trade acceptances—that is, the Acampo Winery had trade acceptances for everything except the certain items in dispute, which consisted of bottled goods.

Q. In other words, everything was covered by trade [212] acceptances, in the ordinary course of business, except the bottled goods?

A. That is right.

Q. And this bottled goods was Acampo Winery's, under their own label? A. Yes.

Q. Which they wanted to have a distributing office in Southern California?

Mr. Hindin: Just a second. If the court please, I am going to interpose an objection to this line of examination on the ground that it attempts to go behind a proven claim in the bankruptcy court of Acampo Winery and is, therefore, incompetent and immaterial with reference to this action.

Mr. Victor Cogen: We are not questioning the account, counsel. We are questioning that there was no debt at the time of the transfer of the property and no debt was in existence until the trade ac-

(Testimony of Maurice Kahn.)

ceptance was given, because if at that time they were merely acting as agents for the Acampo Winery it shouldn't be on the books of the company, nor should it be considered a debt of the company.

Mr. Hindin: That goes behind the bankruptcy claim that has been proved.

The Court: On the other hand, if one of the parties to this action is not a party to that bankruptcy proceeding he is not bound by it. [213]

Mr. Victor Cogen: That is right.

Mr. Hindin: Pardon me?

The Court: Isn't it true that Ivan was not a party to the bankruptcy proceedings and is not bound by it? So you have to prove your case, as far as he is concerned, and that is the reason you introduced the claim.

Mr. Hindin: That is right.

The Court: I think I will overrule the objection.

Mr. Victor Cogen: Will the reporter repeat the question?

The Court: Let's get down to business and find out what the transaction was on this bottled wine, instead of asking a lot of questions.

Q. By Mr. Victor Cogen: All right, Mr. Kahn, let's make it short. Tell the court exactly what was done in reference to the bottled wine transaction, how it was handled through the salesmen of the Acampo Winery, and how it was handled as far as the Acampo Winery is concerned, and when settlement was made, and what was finally done with

(Testimony of Maurice Kahn.)

reference to the payment of money and trade acceptances.

A. Well, I can start off the whole thing by saying it was just one of those things—in other words, a lot of bottled wine was shipped down by the Acampo Winery, and an invoice later came in from the Acampo Winery and I asked what was the reason for the invoice. And, as I understood it, under the State law no licensee is allowed to ship wine [214] to another licensee on consignment basis; but the understanding was that it really was a consignment basis.

Q. From whom to whom?

A. From Acampo Winery to the Ace Distributing Company; but at the same time the Acampo Winery set up—was supposed to have set up a sales division here, and they paid two salesmen, Menilla and Russo, and I believe Mr. Lenci was supposed to be head of it, or something like that. I do know this: That at that time they were not paid by the Ace Distributing Company. If they were, the books will reflect it. In other words, I am not relying entirely on my memory. They went out and received orders; they passed on the credit—

Q. Who passed on the credit?

A. These salesmen. They took the samples supposed to be charged to either them or Acampo Winery; and I believe at the time—I don't remember—but I believe all the records were kept in an envelope, or something, so that when a settlement was made they would straighten it out.

(Testimony of Maurice Kahn.)

Mr. Hindin: I am going to move, if the court please, to strike all of that portion of the witness' answer which refers to what the Acampo Winery did, on the ground that there is no proper foundation laid that any representative or agent of the Acampo Winery is here, and this man is not qualified to lay a foundation as to the agency of any agent or representative of the Acampo Winery.

The Court: Well, he can testify as to what happened [215] down there.

Q. By Mr. Victor Cogen: Were some of the bills marked "Acampo Winery"?

The Court: Did the Ace people sell that wine themselves?

A. Bill it out themselves?

The Court: Yes.

A. Yes.

The Court: Did the Acampo Winery people bill it out, too?

A. No, sir. They didn't have any—

The Court: When these salesmen went out and sold this wine who would deliver it?

A. Ace would deliver it.

The Court: Who would collect for it?

A. Sometimes the Ace would; sometimes the salesmen.

The Court: Did the money come in to the Ace from whoever collected it?

A. Not all of it. There was a dispute on that, too.

The Court: At the end of the time did they have a settlement?

(Testimony of Maurice Kahn.)

A. Yes.

The Court: How long after the wine was received?

Q. By Mr. Victor Cogen: Was that some time in January?

The Court: Just a moment. Let the witness answer.

A. I believe it was settled when trade acceptances [216] were made for the bottled wine.

The Court: How much was the original invoice?

A. I would have to check the records. There were two or three invoices, and there was some wine came over from another place, in which no invoice was ever received by the Ace Distributing Company. In other words, if I remember, they sent out a statement as to what the bottled wine account was, and I could only trace two or three invoices against their bills; and they had about four invoices, and we later found out that some wine had come from a distributor to whom they had sent the wine, and then it had been sent to Ace Distributing Company. And someone in Pasadena had received some bottled wine and they sent it over to the Ace Distributing Company. And there were one or two involved transactions. Wine would come in without any invoice. In other words, it was supposed to be billed by the winery.

The Court: As I understand, it was originally billed to them, but it was a secret understanding?

(Testimony of Maurice Kahn.)

A. There must have been something.

The Court: You don't know, do you?

A. No.

The Court: That is all, then.

Mr. Victor Cogen: You see, your Honor, the man that handled that is the man that is now deceased.

The Court: That is one of the unfortunate things: [217] when somebody dies they take something with them.

Mr. Victor Cogen: But I can ask questions, your Honor—

Mr. Hindin: Just one second. Before you ask the next question I would like to interpose an objection and move to strike all the testimony of this witness concerning this deal with Acampo Winery, on the ground that it is circumstantial evidence.

The Court: We haven't a jury here.

Mr. Hindin: We have a record, though, your Honor.

The Court: All right. I am going to deny the motion for your record.

Q. By Mr. Victor Cogen: Was this entire matter settled up some time when a payment of \$600 was made and trade acceptances for \$811 issued for the first time in reference to these items, and the trade acceptances being due some time around May 20, 1940? A. I believe that was the transaction.

Q. They have a trade acceptance set forth in their—

(Testimony of Maurice Kahn.)

The Court: Counsel, I have heard enough about this bottled wine. We have spent so much time on it already.

The Witness: If the court please, there is only one thing I can say about it: That before this thing was settled I was present with Mr. Mondavy and, I believe, Mr. Polakof was there, and they had me go over the records, and whatever conversation took place—I mean we all chipped in our bits of information to settle the whole thing. [218]

The Court: Well, you had a dispute and you settled on a certain amount?

A. That is right. In other words, Mr. Mondavy, who was either vice-president or president of the winery, came down to straighten out the matter; and he admitted certain facts and certain things were allowed against the winery, and certain things against Acampo were disallowed. That is the way we settled it. We took no cognizance of the invoices we had in our possession, at all; just took the Acampo Winery figures.

The Court: All right.

Mr. Hindin: I have no further questions.

Mr. Victor Cogen: That is all. Defendants rest.

Mr. Hindin: No rebuttal. I would like about 20 to 30 minutes, if the court would grant me that.

The Court: Yes. I would just as leave get it over

with right now, then we won't spoil the afternoon for anybody.

Mr. Hindin: There is, under the law of the State of California, two pertinent code sections in the Civil Code of the State of California. The first one is 3439, which in 1939 was amended by substitution of the uniform fraudulent conveyance act. But for purposes of this hearing I assume that the acts in question took place before the effective date of the amendment. So that the effective section, as of the dates in question, is the old 3439, and [219] the old section 3442 of the Civil Code. Section 3439 is very short, and with your Honor's permission I would like to read it.

"Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor."

That is the first section. The second section which is involved in this action is 3442, which is equally very short and I would like to read it.

"In all cases arising under section twelve hundred and twenty-seven, or under the provisions of this title, except as otherwise provided in section thirty-four hundred and forty, the question of fraudulent intent is one of fact and not law; nor can any trans-

fer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration; provided, however, that any transfer or incumbrance of property made or given voluntarily, or without a valuable consideration, by a party while insolvent or in contemplation of insolvency, shall be fraudulent, and void as to existing creditors."

Now, if the court please, there is a distinction between those two sections. The first section provides for the [220] voiding of transfers made with intent to defraud or delay creditors. And the cases which I have cited, and which I will call to your Honor's attention in construing that section, hold that the intent must be proven. The intent to defraud must be proven. How that is proven is from circumstantial evidence, as the cases hold. In this case if the transfer is fraudulent because of the intent to defraud, it is void as against creditors and the question of insolvency is immaterial. I have considerable authority on that point and I will submit it to your Honor. We find from the first section, which is that if there is a fraudulent intent, as shown by circumstantial evidence, the question of solvency is immaterial and the transaction is void by reason of the intent. And the second section is what we might call a statutory fraudulent transfer, in that where a transfer is made by a debtor who is insolvent at the time, or is made in contemplation of insolvency and the transfer is without adequate consideration,

then it is fraudulent and void as to existing creditors without any other proof of the fraudulent intent.

Now, there is still another doctrine in the law which, I take it, is important for the consideration of the court, and that is this: That where there is a showing that a transfer is made without adequate consideration, and a showing is made that there are unpaid existing creditors, by just those two facts a *prima facie* case of fraud is made [221] out and the burden shifts to the defendant, to the transferee, to show solvency on the part of the grantor. There is a federal case, a Circuit Court of Appeals case, so holding that doctrine. There are numerous California cases, which I will cite to the court. Now, we find that there are these two doctrines of fraud, if you please, requiring different amounts of proof. Let us take the facts in this case, with reference to the first, and that is the question of actual fraudulent intent. In this case the facts show, I believe—

The Court: I have heard the facts and I am still looking for any evidence of intent to defraud. I think I should tell you in that regard, in fairness to your argument, that the reason I am calling upon you is that I can't see where the usual badges of fraud appear in this picture.

Mr. Hindin: Very well. May I answer that, your Honor?

The Court: Yes.

Mr. Hindin: That will, then, eliminate the first type of fraud for the purposes of argument. The second type of fraud is statutory, and that holds, under Section 3442 of the Civil Code, that a transfer made by a person without adequate consideration, and in the face of insolvency and in the face of existing creditors, or made in contemplation of insolvency, is fraudulent without the necessity of proving any further intent whatsoever. I have here some six or eight cases, some by the Circuit Court of Appeals [222] of the Federal Circuit, others by the Supreme Court of the State of California, and other courts of last resort, holding that where a transfer is made in the face of existing creditors unpaid—just that much—fraud is presumed; the intent is presumed, and the burden of proving solvency and good faith is upon the defendant, the transferee, if you please, as well as the grantor.

If that is the State law we have only to look, then, to see whether or not we have made out a case of *prima facie* fraudulent intent; and that is a lack of consideration for the transfer in the face of existing creditors. Now, I believe there is no argument that there were existing creditors. That is a clear fact. The second point is, was it made while the defendant was insolvent or was it made in contemplation of insolvency. We find in the record this evidence: That the defendant, Marvin Polakof, ostensibly ran this business. We find that from the first of January of 1939 until the effective date of the transfer all the capital had been withdrawn

from the business, from a \$2,000 net worth to approximately no net worth—or, \$37, I believe, taking the accountant's figures—without recognizing these additional claims. We find this situation: The net worth being withdrawn from the business, and at the same time this transfer being made without consideration. And then within six months after that we find that there was an insolvency to the extent of \$2,000. [223]

Now, under the cases which I will cite to your Honor, and which I will sincerely ask your Honor to read, that is fraud by reason of the operation of these code sections. And in the face of that the burden then shifts to show solvency on the defendant, which, I submit, has never been shown in this case. And under those circumstances, your Honor—I don't want to keep you over your lunch hour.

The Court: Don't worry about that. If you have anything you want to say I will be glad to hear from you.

Mr. Hindin: I have prepared here, your Honor, a very brief memorandum of the points and authorities, which I will be glad to submit to your Honor for your consideration. It will save my time and save the court's time in analyzing each one of these cases. And I sincerely urge upon the court to read those cases, because they clearly set out the right of the creditors, in this case the trustee in bankruptcy, to rely on this *prima facie* showing. Once that *prima facie* showing is made the cases are

legion that it devolves upon the defendant under this cloud to show how it was, and that, in my opinion, was not proven. They did not carry that proof forward. I would ask leave of the court at this time to file this memorandum of points and authorities. [224]

The Court: I think there is plenty of law on your side, but I think the facts are very weak. The facts preponderantly show that this property belonged to Ivan from the inception of the transaction. There is no dispute about the fact that Ivan paid off this other co-owner, by a cashier's check, I believe, of something over a thousand dollars. That is one of the strongest evidences of interest in property, to pay off the encumbrance that effects it. I further feel that there is no evidence here that these people did what is ordinarily done when there is a piece of property in one's name, that is, to hold it out to his creditors.

Mr. Hindin: May I show your Honor where that was actually done? There are two statements, your Honor, which I don't believe you had an opportunity to inspect. They were rushed over quite rapidly. These two statements mention real estate, and there was no other real estate involved.

The Court: I understand this was explained as real estate worth \$15,000, and the encumbrance \$10,500.

Mr. Hindin: It shows \$20,500, which is approximately what they valued the property. And the only thing they offered to prove what that meant was

that they had an option to purchase the property. An option, we know, is not an interest in real estate.

The Court: But, on the other hand, if they treated [225] as an obligation the liability under the option, then they would also, at the same time, have treated the property covered by it as an asset.

Mr. Hindin: Well, actually, the option, I don't believe, was ever exercised, your Honor. And before exercising it they couldn't assume it as an obligation.

The Court: I think that the defendants' explanation of that is satisfactory to the court, at least.

The burden in the case of fraud is always on the plaintiff. This encumbrance took place in 1937. The evidence is that they were solvent at that time. The fact that they took the transfer in 1939 is a question of whether they were solvent or insolvent. The accountant figured out they were solvent by about \$37, but he stated that figure might vary as much as \$500 one way or the other. It was an estimate. But the original transaction took place years before, and the recording of it. There was no pressing of creditors at the time this deed was recorded, and the bankruptcy did not take place until 18 months after.

I feel that the court should not break in and take property away from a defendant and turn it over to a trustee unless the evidence is strong

and convincing. A judgment in this case in favor of the trustee would be to take property away from an individual. I think that the record of title in his name should not be overcome, except by very strong and convincing evidence. To hold otherwise [226] would be to do a grave injustice to the parties, and I don't believe that our courts should lend themselves to leaning backwards to enable trustees to take property which they claim in their enthusiasm. And if I were to hold in favor of the plaintiff in this case I would do exactly that, because it hasn't any of the badges of fraud. There is no evidence that any creditor has been misled in any way, shape or form by the fact that this title was in the name of Marvin. The fact is that the evidence has not disclosed that any of them knew of it.

As far as Marvin Polakof is concerned, the court has not any particular sympathy for him. I think the testimony of a young able-bodied man, who comes into court and has to admit that he has not paid for the wedding ring that he bought on a conditional sales contract, and a suit of clothes that he wore out, is not worth a great deal. And I have not given a great deal of weight to his testimony for that reason. I think he ought to be ashamed of himself, and if he had any manhood he would at least pay for those personal obligations. They are moral obligations, as far as that is concerned. But at the same time, this court has to

find from the evidence. The law is clear, to my mind, but the evidence in this case is lacking.

Judgment will go for the defendants. Defendants' counsel are directed to prepare and submit the findings within ten days. [227]

Mr. Victor Cogen: Will you waive findings?

Mr. Hindin: No; we want findings. May we have an order, your Honor, that this judgment is without prejudice to the rights of the trustee to ask for letters of administration to the estate of Sam Polakof?

The Court: This hasn't anything to do with Sam Polakof. He is not a party to it.

Mr. Ehrlich: What Mr. Hindin meant, your Honor, is that it be without prejudice to any claims which we might subsequently prove that Sam Polakof might have in and to this property.

The Court: I don't know. I think that the administration of these estates is the responsibility of the referee, and the referee should not authorize a piecemeal suit. There should not be another suit brought now. If it was going to be brought it ought to have been brought against both parties originally. I think it is unduly delaying the administration of the bankruptcy proceedings. If there is any such claim against Sam Polakof that is a matter for the referee to pass on. If he wants to authorize a suit, of course, that is within his discretion; but if it came before this court for review I think I would find that he had abused his

discretion to permit a piecemeal litigation. I don't think it is fair. I think there should be an end to litigation; that it should not be carried on piecemeal.

Mr. Ehrlich: Thank you, your Honor.

[Endorsed]: Filed Feb. 27, 1942. [228]

[Endorsed]: No. 10117. United States Circuit Court of Appeals for the Ninth Circuit. Gustave I. Goldstein, as Trustee in Bankruptcy of the Estate of Marvin Polakof, Appellant, vs. Marvin Polakof and Ivan Polakof, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed April 27, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

#10117

GUSTAVE L. GOLDSTEIN, etc.

Appellant,

vs.

MARVIN POLAKOF, et al.,

Appellee.

STATEMENT OF POINTS TO BE RELIED
UPON ON APPEAL and DESIGNATION
OF PARTS OF THE RECORD TO BE
PRINTED.

The Appellant intends to rely upon the following points on this Appeal:

1) The trial court erroneously found and held that the defendant, Ivan Polakof, owned the property involved in this action from the inception, and that the defendant, Marvin Polakof, never had owned any interest in the said property, which finding is contrary to and not supported by the evidence.

2) The trial court erroneously found that the evidence did not show fraud in the transfer of the said property by the defendant, Marvin Polakof, to the defendant, Ivan Polakof.

The Appellant hereby designates the following parts of the record to be printed:

Complaint

Answer of Marvin Polakof

Amended Answer of Ivan Polakof

Stipulation for Amendment of Complaint dated
October 2, 1941

Findings of Fact and Conclusions of Law
Judgment

Notice of Appeal

Reporter's Transcript of Testimony (beginning
at page 2 and continuing until the end at
page 228)

All of the exhibits, with the exception of Plaintiff's exhibits 1, 2, and 6, and the four claims in bankruptcy which were admitted by reference, and defendant's exhibit A, all of which are to be omitted from the printed record. Instead of these omitted exhibits, the printed record is to contain the following statement:

"Plaintiff's exhibit 1 is a Deed from R. E. Allen, as Trustee in Bankruptcy of Realty Mortgage Corporation to A. Fratkin and Marvin Polakof, dated October 30, 1935, covering the property involved in this action. The deed recites a consideration of \$2,625.00 and was recorded in the office of the Recorder of Los Angeles County on January 4, 1936.

Plaintiff's exhibit 2 is a deed from A. Fratkin and Marvin Polakof, to Marvin Polakof, dated May 15, 1936, covering the same property. The deed recites a consideration

of \$10.00, and was recorded on May 18, 1936.

Defendant's exhibit A is a Stock Certificate #42 for five shares of Connemara Mutual Water Co., issued to Ivan Polakof dated October 11, 1937".

Dated at Los Angeles, California April 23, 1942.

JEROME L. EHRLICH and

MAURICE J. HINDIN,

By MAX BERGMAN,

Attorneys for Appellant.

